ATTACHMENT F

RESPONSIVENESS SUMMARY

I. INTRODUCTION

The purpose of this Responsiveness Summary is to summarize and respond to public comments submitted on a preliminary report dated August 30, 2001, entitled "Draft Report on U.S. EPA Review of Ohio Environmental Programs (Draft Report)," as set forth below. U.S. EPA prepared the Draft Report in response to a petition submitted on behalf of Ohio Citizens Action, the Ohio Sierra Club, the Ohio Environmental Council (subsequently replaced by the Ohio Public Interest Research Group) and Rivers Unlimited. The Draft Report describes U.S. EPA's preliminary conclusions based on reviews that began in January 2000. Specifically, the Draft Report looks at the State's administration of the federal Resource Conservation and Recovery Act (RCRA), Clean Water Act (CWA) and Clean Air Act (CAA), and Ohio's legal environmental enforcement offices. The Draft Report and related documents are available at Ohio public libraries in Cincinnati, Columbus, Cleveland, Dayton, Dover, Marietta, Toledo and Youngstown. The report is also available on the Internet at www.epa.gov/region5/ohioreview/repository.htm. This Responsiveness Summary is not a final agency action.

U.S. EPA held two public meetings on November 13, 2001, in Columbus, Ohio, to present the preliminary findings of the U.S. EPA review of Ohio environmental programs. U.S. EPA also accepted written comments on the Draft Report until January 14, 2002. This summary responds to the oral comments received during the public meetings, to the written comments presented during the public meetings, and to the written comments received during the public comment period.

In order to assist U.S. EPA in responding to the comments, U.S. EPA hired Tetra Tech EM, Inc. (Tetra Tech) to analyze and summarize the comments received. Tetra Tech reported to U.S. EPA that a total of 6,692 comments were received. Of these comments, 5,324 were form letters recommending that U.S. EPA withdraw Ohio EPA's authority to enforce major environmental laws. Ohio Citizen Action, one of the petitioners in the review, forwarded these form letters during the public meetings in Columbus. A total of 1,205 individuals sent letters to U.S. EPA based on an Ohio Citizen Action message format recommended in a flier that was distributed to the public. Of those, over 99 percent expressed concerns about Ohio EPA, alleging that serious flaws exist within Ohio EPA, that U.S. EPA should take action, and that U.S. EPA should possibly withdraw Ohio EPA's authority. Less than 1 percent of the comments indicated that there were no problems with Ohio EPA's authority. U.S. EPA received 66 other letters from members of the public. Of the letters sent to U.S. EPA by the general public, local and state officials, industry, and environmental groups, the majority expressed concerns about the manner in which Ohio EPA conducts itself, handles complaints, enforces regulations, issues permits for

landfills, and issues permits for wastewater treatment plant expansions.

Ninety-seven individuals spoke at the public meetings held in Columbus on November 13, 2001. Comments voiced at the public meetings mostly indicated the need for effective enforcement of environmental laws in a manner that is more open to the public.

U.S. EPA received comments from most areas of Ohio. As expected, a significant number of letters were from individuals in the major metropolitan areas, with the Columbus area being the source of the greatest concentration of letters. There was a greater concentration of the form letters delivered by Ohio Citizen Action from the Columbus area, the northeast corner of Montgomery County (near Dayton), northern Medina County, and a zip code in eastern Summit County. The latter zip code is near Kent State University and the American Landfill. Further details and figures are in the Tetra Tech summary and supporting documents, which are in the Administrative Record for the Ohio petition.

Commenters often commented on the same basic issues within the Draft Report. To avoid repetition, this Responsiveness Summary summarizes all similar comments received regarding the Draft Report, and responds to the comments by category or subject matter indicating how the Final Report reflects Agency consideration of the comments, or why it failed to do so. U.S. EPA used the summary produced by Tetra Tech as a starting point in this process, referring back to the comments themselves as necessary, and summarizing similar or identical comments and responding collectively. U.S. EPA answered specific comments individually.

U.S. EPA has made an effort to address all appropriate comments regarding the Draft Report. It is not appropriate or possible at this point in the review, however, for U.S. EPA to investigate new factual allegations. U.S. EPA has tried, where appropriate, to bring each new factual allegation (typically, but not always, a facility specific comment) to the attention of the appropriate program at U.S. EPA. Other general categories of comments to which only a limited response is possible are comments that are vague or conclusory in nature, or comments not related to the program withdrawal criteria. These comments could not affect the recommendations or outcome of this review as to whether cause exists to commence withdrawal or revocation proceedings. In addition, U.S. EPA could not respond to comments regarding worker health issues because the available data did not include quality assured health related data that could be used to evaluate health impacts of Ohio EPA's action or inaction. In addition, the CWA, RCRA and CAA protocols were not designed to address worker health issues.

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II. COMMENTS AND RESPONSES - GENERAL AND MULTI-PROGRAM COMMENTS

Comment No. 1

The petitioners commented that U.S. EPA had not undertaken a consistent evaluation among the programs and may have missed critical elements in some programs, saying that the report found similar flaws in the RCRA, CWA and CAA programs while reaching different preliminary conclusions, and arguing that U.S. EPA should have found a basis to withdraw all the programs.

Response: U.S. EPA has reviewed the allegations in the petition and has made a number of determinations in response to those allegations as to whether U.S. EPA should take the action requested by the petition. The allegations with respect to each program vary depending upon the program and the aspect of the program complained about by the petitioners. In this matter, the petitioners raised concerns with five CAA programs, two RCRA programs and one CWA program. The nature, intensity and specifics of the concerns alleged also vary by program and by aspect of program (e.g., standard setting, permitting and enforcement).

U.S. EPA reviewed the allegations with respect to each program based on the requirements and withdrawal criteria applicable to the program reviewed.[1] These requirements and criteria vary depending on the program and the aspect of the program reviewed.

In addition, the withdrawal criteria generally refer to a failure of a state program to meet requirements. Such criteria require not only the identification of problems in specific instances but also a determination as to whether there is a systemic problem that rises to the level of a failure to meet program requirements. For example, a decline in the number of inspections does not require initiation of withdrawal proceedings if the number of inspections is still consistent with program requirements.

U.S. EPA staff conducted thorough reviews of the respective Ohio EPA program based on the statutory and regulatory criteria for withdrawal of each program and looked at all the issues raised by the petition with respect to each program. As discussed in the report and background documents, U.S. EPA did not find ~~a~~ sufficient evidence to warrant the initiation of withdrawal proceedings.

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[1]Although U.S. EPA was only obligated to consider the allegations in the petition in determining what action to take in response to the petition, and did do so, U.S. EPA also has discretionary authority as part of its ongoing oversight of state programs to review issues not raised by a petition and, in some instances, exercised that authority while conducting its review of the allegations in this petition. However, the fact that U.S. EPA exercised its discretionary authority to review matters not raised by the petition with respect to certain Ohio environmental programs does not mean that U.S. EPA was required to exercise its discretionary authority in the same way in reviewing all of Ohio's environmental programs.

Comment No. 2
The petitioners contend that U.S. EPA should have interviewed people submitting affidavits.

Response: To determine whether cause existed to commence withdrawal or revocation proceedings, U.S. EPA performed a relatively broad assessment of Ohio EPA programs. For each Act, U.S. EPA developed a protocol to gather factual information to assess whether it should initiate withdrawal proceedings. It would not be possible to use direct citizen interviews to provide the additional information that was needed to investigate the allegations. However, U.S. EPA did use information that citizens provided in affidavits.

As part of its review, U.S. EPA considered the affidavits submitted in July and August of 2000 in addition to the materials attached to the petition and its supplements and amendments. Presumably, an affiant who wanted to provide information about Ohio EPA's administration of programs would have included that information in or with his affidavit. Moreover, U.S. EPA provided ample opportunity for affiants to provide supplementary information. U.S. EPA held public meetings in Columbus on November 13, 2001, over a month after the Draft Report was issued; transcribed the comments submitted at that meeting; and took additional written comments until January 14, 2002. Rather than questioning particular affiants about their affidavits, U.S. EPA took all affidavits submitted at face value and examined the affiants' allegations with respect to withdrawal of Ohio EPA programs. U.S. EPA developed protocols for each program and examined files under the relevant protocols and interviewed Ohio EPA employees. U.S. EPA published its preliminary findings in the Draft Report. Affiants who took issue with U.S. EPA's evaluation in the Draft Report could have submitted comments.

Comment No. 3
The petitioners contend that the Draft Report fails to "connect the dots" to reveal the pattern of Ohio EPA failures, pointing to examples given of investigation, detection and enforcement delays, monitoring that missed releases, and inadequate testing and sampling with respect to several facilities.

Response: While U.S. EPA considered statements made regarding individual facilities, it reviewed how Ohio EPA was administering each program as a whole. As discussed above, the analysis was not instance-specific, but rather program wide, consistent with the withdrawal criteria. U.S. EPA did consider the cumulative effect of the concerns voiced regarding Ohio EPA action at individual facilities, but determined that it did not rise to the level that would trigger the initiation of withdrawal proceedings. Overall, Ohio EPA conducted inspections, issued permits, brought enforcement actions, collected penalties and prosecuted crimes. Withdrawing a program from a state can have serious consequences, and the standards for withdrawal are accordingly high.

Comment No. 4
The petitioners attributed to Ohio EPA the "mind and soul" of a polluter and argued that Ohio

EPA lacked will and had an audit secrecy law that prevented it from carrying out the equivalent of a federal program.

Response: U.S. EPA's review found that Ohio EPA was administering its programs at an acceptable level, albeit with different degrees of success depending on the program and the activity reviewed.[2] Moreover, Ohio EPA has taken a number of steps to improve its programs and enforcement during the course of the review.

While equivalency is a statutory term specific to the RCRA Subtitle C program, neither U.S. EPA nor the petitioners identified instances where regulations were less stringent than the federal program. Nor did the petitioners or the review identify instances where Ohio EPA was releasing pollution into the environment. The petitioners' subjective assertion regarding "will" does not speak to whether the State met program requirements. Petitioners appear to use the term "failure" and "flaw" very broadly to encompass any imperfection, without regard to degree. As discussed in U.S. EPA's December 21, 2000 denial of the audit law component of the petition, Ohio's audit law as amended and interpreted does not present legal authority issues for authorized, delegated and/or approved programs.

Comment No. 5

U.S. EPA has sufficient basis to justify withdrawal of Ohio EPA's authority to implement CAA programs, CWA NPDES program, and RCRA's hazardous and solid waste programs.

Response: U.S. EPA disagrees. As set forth in the Final Report, based on the information gathered during the review and comment periods, U.S. EPA did not find failures with Ohio EPA's environmental programs which rise to the level of initiating withdrawal of those programs based upon the facts developed during the review period of 1995 to 2000.

Comment No. 6

Petitioners commented that U.S. EPA must exercise its withdrawal authority based on Ohio EPA's failure to carry out five "imperatives" that apply to all three sets of federal programs and any one of which should be grounds for withdrawal, distilling the following themes from criteria for three of the eight programs affected by the petition: (1) exercise control over activities required to be regulated under federal law; (2) issue permits that conform to the requirements of federal law; (3) inspect and monitor activities subject to regulation; (4) use appropriate

mechanisms to verify representations of polluters; and (5) properly exercise enforcement authority to avoid the failure to act on violations of permits or other program requirements, and the failure to seek adequate enforcement penalties or to collect administrative fines.

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[2]The one exception is that Ohio EPA's CAA Title V regulations did not meet federal requirements in two respects, and U.S. EPA issued a notice of deficiency to the State on both issues. *See* 67 Fed. Reg. 19175 (April 18, 2002).

Response: Even with respect to those three programs, petitioners' formulation of what they term "imperatives" ignores the language of the withdrawal criteria. The RCRA Subtitle C withdrawal criteria at 40 C.F.R. § 271.22, the CWA NPDES withdrawal criteria at 40 C.F.R. § 123.63, and the CAA Title V requirements at 40 C.F.R. § 70.10(c) speak, among other things, of a "failure" to exercise control over activities required to be regulated; a "failure" to inspect and monitor; and a program that "fails" to comply with requirements, including "failure" to act on violations. (The petitioners' "imperative" on using appropriate mechanisms to verify representations of polluters is derived from RCRA Subtitle C criteria for inspections, at 40 C.F.R. § 271.15(b) (2)(ii), which merely requires that inspections be conducted in a manner designed to verify the accuracy of information submitted by permittees and regulated persons in reporting forms and other forms supplying monitoring data.) The RCRA Subtitle D withdrawal criteria at 40 C.F.R. § 239.13(a) focus on the adequacy of the permit program and enforcement authority. Withdrawal of a state program is a serious remedy and the withdrawal criteria reflect that such a remedy is only triggered upon failure.

Comment No. 7

The petitioners claim that U.S. EPA found the following shortcomings to justify withdrawal of the CAA program and should have found the same shortcomings in the CWA and RCRA programs based on the petition and public testimony: (1) a decline in number of inspections of major polluting facilities or known violators; (2) a failure to verify representations of polluters; and (3) a failure to find unregulated facilities which are circumventing the law. The petitioners claim that U.S. EPA's report either documents the same shortcomings or fails to evaluate them altogether for RCRA and CWA, and that when the proper criteria are applied consistently, U.S. EPA must find that there is justification for withdrawal of Ohio's programs under all three laws.

Response: Again, the criteria for withdrawal of state programs are found under the appropriate regulations. These are the criteria that U.S. EPA used in analyzing the Ohio program. The petitioners' consistency arguments suggest that a broad allegation, without reference to the degree of the alleged shortcoming, the requirements for the program at issue, or the evidence of how that particular program is being implemented, suffices to justify withdrawal or revocation of all programs. U.S. EPA has authorized, delegated or approved Ohio EPA under different statutory authorities, to administer programs governed by different requirements, and administered by different divisions at Ohio EPA.

As discussed earlier, for each Act, U.S. EPA developed a protocol to gather factual information in order to assess whether it should initiate withdrawal proceedings. U.S. EPA disagrees that there is justification for withdrawal of Ohio's programs under all three laws. U.S. EPA identified

specific concerns which Ohio addressed, as set forth in the Final Report.

For a program specific response to the shortcoming allegations see the responses for each

program below.

Comment No. 8
The data in the report shows declines in facility inspections at both CWA and RCRA facilities, but it does not discuss the impact of that decline on Ohio EPA's ability to meet program requirements. Additionally, U.S. EPA's CWA and RCRA review does not display the same understanding of how the reduction in inspections creates a corresponding reduction in Ohio EPA's ability to uncover violations. There is data in the U.S. EPA report showing a 47 percent decrease in CWA inspections and a greater than 50 percent decrease in RCRA inspections.

Response: Regarding CWA inspections, as set forth in the Final Report, Ohio EPA focused on a temporary basis, at U.S. EPA's request, on efforts to reduce the NPDES permit backlog. This resulted in many permittees receiving new permits with effluent limits that were more protective of human health and the environment than the old permits. U.S. EPA agrees that inspections are an important part of the enforcement and compliance program, but believes that it was a justifiable tradeoff to temporarily reduce the number of inspections in order to realize highly significant benefits in much stricter (often several orders of magnitude more restrictive) permit effluent limits on bioaccumulative pollutants of concern.

Regarding RCRA inspections, there was an increase in the number of RCRA compliance evaluation inspections conducted by Ohio EPA between 1995 and 1997. The number of administrative enforcement actions filed during this period decreased. There was a decrease in the number of inspections between 1997 and 1999, but there was no significant change in the number of administrative enforcement actions filed or the number of referrals to the Attorney General during this period. Therefore, a direct correlation between a decrease in the number of inspections, primarily of small and very small hazardous waste generators, and an inability to uncover violations cannot be established using this data.

Comment No. 9
The Petitioners claim that the CWA and RCRA reviewers did not consider whether Ohio EPA has the necessary mechanisms in place to identify unpermitted activities of facilities circumventing CWA or RCRA requirements despite petition and citizen testimony allegedly documenting Ohio EPA's failure to effectively identify unpermitted activities in major case after major case.

Response: Again, the protocols set forth by U.S. EPA based on the petition and the various withdrawal criteria set forth a method of analysis for review for the Ohio programs.

The protocols set forth by U.S. EPA based on the petition and the withdrawal criteria did not focus on unpermitted dischargers. Efforts to directly address unpermitted sources are most productive early in the regulatory process. Since the NPDES program in Ohio is 26 years old, it

now primarily relies on citizen complaints, stream surveys and inspections to identify unpermitted sources.

With respect to Subtitle C, the requirement that a state program be able to identify persons subject to regulation is met through Ohio EPA's hazardous waste enforcement division's periodic inspection program. U.S. EPA determined that the procedures followed under this program are adequate to identify persons subject to regulation.

With respect to Subtitle D, Ohio EPA has the authority to identify persons subject to the MSWLF permitting requirement. Ohio EPA's Division of Solid and Infectious Waste Management or local Health Departments with delegated authority do so as part of their periodic inspection program.

Comment No. 10

The petitioners claim that Ohio EPA is slow to act on violations and often waits until citizens, environmental groups, local governments or U.S. EPA takes legal action before joining the effort, and takes a total quality management approach that the petitioners claim is contrary to the regulatory scheme envisioned in federal environmental law where Ohio EPA is to be first in line to compel compliance and citizens and U.S. EPA should be only backup enforcement.

Response: U.S. EPA and Ohio EPA work closely together on enforcement and inspection issues. U.S. EPA agrees that timely enforcement action is important and that state agencies are at the front line of environmental enforcement. The enforcement process involves a number of steps and, in some situations, involves coordination between government agencies. Delays can, and do, occur for a number of reasons. The changes that Ohio EPA has made in its program and the changes that it has committed to make in the future should reduce delays. In addition, workload is often shared between agencies, and the fact that U.S. EPA may be the lead agency in certain cases is not an indication by itself that Ohio EPA is deficient under the withdrawal criteria.

Comment No. 11

The petitioners claim that Ohio EPA's RCRA or CWA programs would be facing withdrawal if U.S. EPA had performed the same evaluation of these programs' investigation procedures and enforcement record that it did in its CAA review, and say that the final report should recommend across-the-board withdrawal.

Response: This comment combines general conclusory allegations without specifying the failures or their degree, programs, or criteria at issue. U.S. EPA's protocols based on the petition and the various withdrawal criteria set forth a method of analysis for review of the Ohio programs. By examining the various components of the state programs, as well as case files, a comprehensive review of the state programs was achieved. Each program undertook thorough reviews based on the allegations in the petition and the requirements and withdrawal criteria for

each statute. RCRA, for example, expanded its extensive annual review of the State hazardous waste program to look at most of the facilities mentioned in the petition, and in addition to looking at files and conducting interviews, considered experience from accompanying the State on inspections and reviewing State issued permits. As discussed above, the variations in the preliminary findings among programs may reflect not only a difference in the requirements and criteria for each program but also a difference in the operation of each State program.

Comment No. 12

A commenter stated that U.S. EPA's review and analysis of Ohio's Office of Legal Services (OLS) and the Ohio Attorney General's Office (OAG) was incomplete because a number of questions were not answered and because U.S. EPA did not perform a file review to obtain the answers.

Response: In addition to reviewing the program offices for the programs the petition asked to be withdrawn, U.S. EPA reviewed Ohio legal enforcement offices. U.S. EPA reviewed the functioning of those enforcement offices to cover the full range of program implementation activities. While not all of the questions posed to the Ohio legal offices during the meetings held in April of 2001 were answered, the answers provided a good overview of how these offices functioned, and the State allowed copying of requested settlement documents at these meetings and later submitted considerable information about enforcement activities and achievements, as well as follow-up information. The information in the administrative record supports U.S. EPA's assessment of the legal enforcement offices.

Comment No. 13

Petitioners felt that the report should have measured the environmental benefits of Ohio EPA's enforcement activities, and questioned whether there were benefits.

Response: The federal environmental programs do not require a state to report on the environmental benefits of its enforcement activities and Ohio previously did not track such benefits. Consequently, U.S. EPA lacked the underlying information upon which to measure such benefits when it issued the Draft Report. As discussed in Ohio EPA's April 2002 Summary of 2001 Enforcement Performance, Ohio EPA now asks each division to measure the environmental improvement achieved through its enforcement efforts. Some of the benefits gained from enforcement actions in 2001 are discussed at pages 5-6 of that summary.

III. CLEAN AIR ACT - SPECIFIC COMMENTS AND RESPONSES

Comment No. 1

Petitioners comment that U.S. EPA's evaluation of Ohio EPA's air program in the Draft Report verifies the majority of the petitioners' allegations regarding Ohio EPA's enforcement failures, and that further support was provided to U.S. EPA in citizen testimony on November 13, 2001.

Response: U.S. EPA revised some of its preliminary findings related to air enforcement issues based on Ohio EPA's response and other information gathered after issuance of the Draft Report. Ohio EPA committed to address other findings. Ohio EPA has already taken some steps to change its air programs and has committed to take additional actions that will address the issues raised in the Draft Report.

Comment No. 2

Petitioners comment that Ohio EPA permitted Nylonge Corp. (Nylonge) to operate a major stationary source of carbon disulfide in an ozone non-attainment area without complying with CAA major stationary source requirements until after 1998, when U.S. EPA stepped in and took action. A commenter indicated that in 1990, Ohio EPA issued a permit to install (PTI) to Nylonge even though Lorain County is a non-attainment area. Nylonge did not apply for a permit to operate (PTO), but, according to the commenter, Ohio EPA allowed Nylonge to not comply. Frustrated with Ohio EPA, the commenter sought U.S. EPA to cite violations. Another commenter complained that Ohio EPA gave a permit to the Nylonge facility when it is close to residential areas and schools.

Response: U.S. EPA negotiated a CAA Consent Decree on May 24, 1999, calling for payment of $17,812 and obtaining a Supplemental Environmental Project (SEP) that will reduce emissions of carbon disulfide and hydrogen sulfide.

Although the purpose of U.S. EPA's review was not to address environmental issues at specific sites within Ohio, we are forwarding all complaints about continuing problems at specific sites to those within U.S. EPA, Ohio EPA, and local agencies who are responsible for addressing site specific issues. While U.S. EPA's review of Ohio EPA's air enforcement programs included a review of Ohio EPA's inspection and enforcement work at certain facilities, including some cited in the petition, U.S. EPA's findings are based on a more comprehensive review that covers a broad range of enforcement and permitting activities within the air program. Part of this comprehensive review focused on Ohio EPA's actions to ensure that it issues permits according to CAA requirements. As discussed in the Final Report, Ohio EPA has implemented, or agreed to implement, a number of changes to its air programs, which U.S. EPA expects will enhance Ohio EPA's efforts to address CAA violators.

Comment No. 3

Petitioners comment that Ohio EPA classified Willard Industries as a "de minimis" source based on the facility's representations. A stack test was finally conducted after years of citizen complaints, revealing it to be a major source of styrene operating in violation of Title V. Ohio EPA's "remedy" was insufficient and the City of Cincinnati is now pursuing the matter against Willard.

Response: Although the purpose of U.S. EPA's review was not to address environmental issues at specific sites within Ohio, we are forwarding all complaints about continuing problems at specific sites to those within U.S. EPA, Ohio EPA, and local agencies who are responsible for addressing site specific issues. While U.S. EPA's review of Ohio EPA's air enforcement programs included a review of Ohio EPA's inspection and enforcement work at certain facilities, including some cited in the petition, U.S. EPA's findings are based on a more comprehensive review that covers a broad range of enforcement activities within the air program. Part of this comprehensive review focused on Ohio EPA's actions to identify unpermitted major sources. As discussed in the Final Report, Ohio EPA has implemented, or agreed to implement, a number of changes to its air programs, which U.S. EPA expects will enhance Ohio EPA's efforts to address CAA violators.

Comment No. 4

Petitioners commented about AK Steel's Mansfield and Middletown facilities. At the Mansfield facility, petitioners assert that Ohio EPA has permitted CAA violations for decades despite neighbors' complaints and allegations that the company routinely shut down its dampers, which bypass the pollution control devices so the facility can vent more quickly and increase production.

Regarding the AK Steel Middletown facility, petitioners state that dust, soot, kish, heavy metals, and VOCs have been emitted in violation of CAA for years without Ohio EPA action. (There were at least 78 complaints between October 1990 and June 1997 and 89 complaints between June 1997 and February 2000.) Petitioners assert that Ohio EPA's testing was not properly performed, and that finally U.S. EPA filed litigation, which Ohio EPA joined.

Besides petitioners, several commenters expressed environmental and health concerns regarding emissions from the AK Steel facilities. One commenter suggested installing an air monitoring system around the facility.

AK Steel commented that allegations made during the 11/13/01 public hearing in Columbus are unsubstantiated, specifically regarding health problems, and there is no evidence that the AK Steel plant causes health problems. AK Steel responded to allegations made against the Mansfield Works facility, specifically, that it shuts down the filters and/or dampers on its pollution control equipment at night and that upgraded pollution control equipment has not been installed, saying that data does not support this allegation.

Response: Ohio EPA has joined U.S. EPA in a civil lawsuit against AK Steel for CAA violations. Although the purpose of U.S. EPA's review was not to address environmental issues at specific sites within Ohio, we are forwarding all complaints about continuing problems at specific sites to those within U.S. EPA, Ohio EPA, and local agencies who are responsible for addressing site specific issues. While U.S. EPA's review of Ohio EPA's air enforcement programs included a review of Ohio EPA's inspection and enforcement work at certain facilities, including some cited in the petition, U.S. EPA's findings are based on a more comprehensive review that covers a broad range of enforcement activities within the air program. As discussed in the Final Report, Ohio EPA has implemented, or agreed to implement, a number of changes to its air programs, which U.S. EPA expects will enhance Ohio EPA's efforts to address CAA violators.

Comment No. 5

A commenter asked why Ohio EPA lets industries like AK Steel monitor and report their own pollution levels.

Response: It is a customary practice and often required by statute for regulatory agencies to require companies to conduct self monitoring and reporting. The regulatory agency retains the right and responsibility to evaluate the accuracy of the reports it receives. Ohio EPA has committed to make changes in the way it inspects facilities that will help it detect problems with reports submitted by companies. Ohio EPA is also implementing a more consistent and uniform process for reviewing such company submitted reports. In some cases, monitoring systems used by companies are subject to stringent certification requirements and other quality control requirements to reduce the possibility that the information will be inaccurate.

Comment No. 6

Petitioners comment that Ohio EPA has dismissed citizen complaints concerning the Eramet facility, stating there is no proof, but has taken no action to verify the facility's representations or follow up on citizen complaints. Additional commenters expressed health concerns regarding emissions from the facility and complained of Ohio EPA's inaction in addressing the concerns.

Response: Although the purpose of U.S. EPA's review was not to address environmental issues at specific sites within Ohio, we are forwarding all complaints about continuing problems at specific sites to those within U.S. EPA, Ohio EPA, and local agencies who are responsible for addressing site specific issues. While U.S. EPA's review of Ohio EPA's air enforcement programs included a review of Ohio EPA's inspection and enforcement work at certain facilities, including some cited in the petition, U.S. EPA's findings are based on a more comprehensive review that covers a broad range of enforcement activities within the air program. Part of this comprehensive review focused on Ohio EPA's actions to verify facility representations and follow up on citizen complaints. As discussed in the Final Report, Ohio EPA has implemented, or agreed to implement, a number of changes to its air programs, which U.S. EPA expects will enhance Ohio EPA's efforts to address CAA violators.

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Comment No. 7

Petitioners comment that there are many violations at the Columbus Steel Drum facility, including installing and modifying sources without permits and exceeding emission limits for particulate, chromium, and lead. Ohio EPA recently turned the matter over to its enforcement committee (after years of citizen complaints), but no action has yet been taken.

Response: Although the purpose of U.S. EPA's review was not to address environmental issues at specific sites within Ohio, we are forwarding all complaints about continuing problems at specific sites to those within U.S. EPA, Ohio EPA, and local agencies who are responsible for addressing site specific issues. While U.S. EPA's review of Ohio EPA's air enforcement programs included a review of Ohio EPA's inspection and enforcement work at certain facilities, including some cited in the petition, U.S. EPA's findings are based on a more comprehensive review that covers a broad range of enforcement activities within the air program. As discussed in the Final Report, Ohio EPA has implemented, or agreed to implement, a number of changes to its air programs, which U.S. EPA expects will enhance Ohio EPA's efforts to address CAA violators.

Comment No. 8

Petitioners comment that Ohio EPA's claims in its comments regarding the adequacy of its training, monitoring activities, investigations, and enforcement actions are not supported by facts. Petitioners argue Ohio EPA's response to the Draft Report reveals the very attitudes and policies that give rise to its investigation and enforcement failures. Petitioners state that Ohio EPA's admissions (such as its failure to conduct "field patrols") reveal its short-sighted circular thinking which keeps it from undertaking meaningful investigations and illustrates why finding illegally operating sources is Ohio EPA's weakest area.

Response: Ohio EPA's response provided additional information concerning many of the preliminary findings in the Draft Report. U.S. EPA carefully reviewed that information and discusses it in the Final Report where U.S. EPA determined that the information justified changing preliminary findings. In addition, Ohio EPA committed to make certain changes that should improve its air enforcement program.

While the preliminary findings in the Draft Report noted that Ohio EPA was not using field patrols as required by the state implementation plan (SIP) it submitted for federal approval many years ago, that should not be interpreted as a finding that the current program is not effective. U.S. EPA agrees with Ohio EPA that there have been many technological improvements over the years in the area of source monitoring. Similarly, U.S. EPA does not dispute Ohio EPA's position that field patrols may not be the most effective and efficient enforcement tool. U.S. EPA cannot, however, unilaterally change the SIP requirement and establish alternate activities. We recommend that Ohio EPA formally revise its SIP to reflect the enforcement techniques it currently uses to enforce the Ohio SIP.

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Comment No. 9

Petitioners indicate that Hamilton County uses designated investigators to respond to citizen complaints rather than an inspector assigned to a particular facility. Citizens were told for years by the Department of Environmental Services that facilities were in compliance based on those facilities' representations. When tests and sampling were finally performed the nature and content of CAA violations became known.

Response: As part of the comprehensive review of petitioners' concerns, U.S. EPA visited Hamilton County Department of Environmental Services (HCDOES) and prepared a trip report, which is in the administrative record. U.S. EPA relied upon findings from this trip report to develop the findings in the Final Report.

Since HCDOES investigates complaints 24 hours per day, designated facility inspectors would be impractical. Further, the source of the pollution causing a complaint may not be known. Finally, although testing can be a useful tool for verifying compliance, it may not be useful if an emissions problem is intermittent or caused by malfunctions or upsets that do not occur during testing.

Comment No. 10

Petitioners indicate that the record reflects that inadequate investigations lead to inadequate penalties.

Response: U.S. EPA did not make such a finding.

Comment No. 11

Petitioners indicate that U.S. EPA should reconsider its review of Ohio EPA's program and practice of regulating facilities in non-attainment areas in light of the Sixth Circuit case overturning Cincinnati's non-attainment designation (42 U.S.C. §§ 7502c; 7511a, 7512a and 7513a), and that penalties should be imposed under 42 U.S.C. § 7509 and 40 C.F.R. § 52.31. Petitioners cite the Nylonge, Georgia-Pacific Resin, Inc., Worthington Custom Plastics, Inc., and Phthalchem, Inc. facilities as evidence of Ohio EPA's failure to ensure nonattainment NSR facilities install Lowest Available Emission Reduction (LAER) technology; obtain offset reductions; demonstrate all major sources owned and operated by the same person are in compliance with all federal requirements; and demonstrate certain other matters required under the nonattainment NSR rules.

Response: In its review of Ohio's NSR program for nonattainment areas, U.S. EPA did not find any areas of major concern in regard to NSR permitting. U.S. EPA has determined further review of Ohio EPA's nonattainment NSR permitting is not possible because Ohio EPA has not conducted any nonattainment NSR permitting activities since the court vacated the redesignation.

Although the purpose of U.S. EPA's review was not to address environmental issues at specific sites within Ohio, we are forwarding all complaints about continuing problems at specific sites to those within U.S. EPA, Ohio EPA, and local agencies who are responsible for addressing site specific issues. While U.S. EPA's review of Ohio EPA's air programs included a review of Ohio EPA's permitting work for certain facilities, including some cited in the petition, U.S. EPA's findings are based on a more comprehensive review that covers a broad range of activities within the air program.

Comment No. 12

Petitioners comment that Ohio EPA not only fails to take enforcement action against facilities circumventing major stationary source requirements, but also assists them in circumventing those requirements.

Response: U.S. EPA in its review did not find any evidence of Ohio EPA assisting regulated facilities in circumventing requirements.

Comment No. 13

Facts presented by petitioners in petitions, testimony, and supporting documentation illustrate a specific pattern of conduct in which Ohio EPA fails to require sources to comply with certain requirements.

Response: U.S. EPA does not agree that just because there are violating facilities in Ohio, Ohio EPA is improperly implementing CAA programs. It is reasonable to expect that in any given regulatory universe there will be violating entities. Their existence does not necessarily demonstrate a systemic failure of the regulator to implement program requirements on the majority of regulated entities.

To develop the Final Report, U.S. EPA conducted a comprehensive five year review of Ohio EPA's files and activities, using protocols designed to investigate Ohio EPA's programs in light of the allegations and withdrawal criteria. To the extent that U.S. EPA identified instances of inadequate program implementation at certain facilities, they are listed in the administrative record. U.S. EPA believes a review of the overall program was sufficient in analyzing whether there is a factual basis for initiating withdrawal proceedings. Moreover, conducting a comprehensive program review provides a much clearer picture of Ohio EPA's overall program implementation than focusing on specific Ohio EPA actions with respect to a set of facilities.

Comment No. 14

Petitioners indicate that Ohio EPA has failed to comply with 40 C.F.R. §§ 51.160, 51.165(a)(1), 51.166, 51.210 et seq., and 51.212.

Response: The rules identified in the comment pertain to the Prevention of Significant Deterioration (PSD) which was a delegated program prior to the issuance of the Draft Report.

On October 10, 2001, U.S. EPA published a notice in the Federal Register announcing it had conditionally approved Ohio EPA's PSD SIP. On January 22, 2003, U.S. EPA published a direct final approval of Ohio's PSD SIP in the Federal Register. The PSD SIP rules are now federally enforceable in Ohio, and replace the delegated federal PSD regulations described above.

In the Draft Report, U.S. EPA's focus for withdrawal centered on the delegation provisions. Since Ohio's PSD SIP is currently effective, concerns with Ohio EPA's implementation of the PSD program must be addressed under the PSD SIP. Therefore, U.S. EPA's final findings concerning Ohio EPA enforcement and permitting activities under its PSD program are based on the SIP withdrawal criteria discussed in the Final Report.

Comment No. 15

Petitioners indicate that Ohio EPA claims it has been using the same penalty calculation since 1988 without U.S. EPA complaint, but this does not justify Ohio EPA's failings. Ohio EPA must comply with program requirements whether U.S. EPA discovers its failure to comply or not.

Response: U.S. EPA did not require that Ohio EPA adopt U.S. EPA's CAA penalty policy. Ohio EPA, however, agreed in past Environmental Performance Partnership Agreements to use the policy. U.S. EPA's preliminary findings stated that Ohio EPA's penalty calculations were sometimes inconsistent with the policy. As a result of continuing discussions between U.S. EPA and Ohio EPA on how Ohio EPA calculates penalties, Ohio EPA provided a description of how it calculates penalties for failure to obtain PTIs and PTOs. Until U.S. EPA can review Ohio EPA's use of this description for calculating penalties over a period of time, U.S. EPA cannot determine whether this description will address its concerns.

Comment No. 16

Ohio EPA commented on the Draft Report's statement that U.S. EPA reviewers found various instances where sources did not have PTOs leading up to the 10/1/95 Title V program permit application deadline and no evidence of enforcement by Ohio EPA. Ohio EPA responded that if an entity submits a timely Title V permit application, that application does not shield that entity from past violations and does not prevent Ohio EPA from taking appropriate enforcement.

Response: No information was provided during the public comment period to change U.S. EPA's finding that some sources lacked PTOs prior to filing Title V applications and Ohio EPA did not take any enforcement action.

Comment No. 17

Ohio EPA commented on the Draft Report's preliminary finding that Ohio EPA does not include economic benefit calculations as part of penalty calculation. Ohio EPA indicated that this generalization is incorrect, and that it uses the U.S. EPA BEN model for enforcement cases. Ohio EPA also commented on the Draft Report's preliminary finding that Ohio EPA does not

consider the CAA penalty policy's adjustment factors. Ohio EPA responded that mitigation factors may not be included in initial calculation, but most final calculations do include mitigation and/or augmentation adjustments.

Petitioners indicate that Ohio EPA claims it calculates an economic benefit where it is a factor, but does not address whether it has established proper guidelines and policies for determining when economic benefit has been improperly obtained by the violator.

Response: U.S. EPA's preliminary findings stated that the Ohio EPA records reviewed did not always document economic benefit calculation, or whether Ohio EPA had considered mitigation or augmentation factors. Ohio EPA stated that it always includes the economic benefit of a violation when appropriate. If Ohio EPA determined that no economic benefit was appropriate in a case, U.S. EPA expected to find documentation of that decision. When U.S. EPA did not find that documentation, it is not clear whether the documentation did not exist, or it was not in the files reviewed. U.S. EPA's CAA civil penalty policy requires consideration of mitigation or augmentation factors in penalty calculations. If a factor is considered and a decision is made not to mitigate or augment the penalty, the file record should note that fact. U.S. EPA did not see such documentation in the files reviewed.

As a result of continuing discussions with Ohio EPA on penalties, Ohio EPA has given U.S. EPA a description of how it calculates penalties for failure to obtain permits to install and permits to operate. Until U.S. EPA can review Ohio EPA's use of this description for calculating penalties over a period of time, U.S. EPA cannot determine whether this description will address its concerns.

Comment No. 18

Ohio EPA indicated that U.S. EPA made a factual error on the number of employees Ohio EPA has to administer Title V programs. Ohio EPA committed to retain 399. U.S. EPA says it counted 222. In reality, Ohio EPA has 385; a shortfall of only 14, not 179.

Response: As noted in an errata sheet issued in 2001, the data U.S. EPA relied upon did not account for local agency employees who carry out many of the air enforcement duties in Ohio. The errata sheet corrected that error.

Comment No. 19

Ohio EPA commented that U.S. EPA looked at the wrong database in tallying the number of Ohio EPA inspections. U.S. EPA tallied 105; Ohio EPA performed 698. U.S. EPA significantly under-reported the number of inspections for every year in the report. U.S. EPA's calculations were off by 564 percent. Ohio EPA also asserted that the Draft Report's preliminary findings on inspections did not address the fact that U.S. EPA knew of and supported Ohio's strategy to reduce the number of inspections performed to concentrate on the issuing Title V permits. In addition, Ohio EPA commented that U.S. EPA failed to recognize the significant inspection

effort that is necessary to inspect non-major facilities and failed to take those inspections into account in the Draft Report. Ohio EPA also noted that the report failed to recognize the annual inspections at 1,554 gas stations and inspections at 15 percent of the asbestos demolition projects.

Petitioners comment that while Ohio EPA frequently claims that a lack of funds or reallocation of funds is the reason for fewer inspections and other failures, this alone is not the cause of Ohio EPA's failure to adequately implement federal environmental laws. Inadequate funding merely exacerbates the other failures and does not excuse Ohio EPA's shortcomings.

Another commenter specifically raised the issue of the downward trend of inspections as a concern.

Response: U.S. EPA agrees with Ohio EPA that the preliminary data in the Draft Report did not include all inspections conducted by Ohio EPA. Some of the inspection data that Ohio EPA cited in its comments had not been reported to U.S. EPA and had not been entered into U.S. EPA's electronic databases. In addition, U.S. EPA did not include some of Ohio's inspections in the Draft Report because they were not relevant to the withdrawal criteria. After review of inspection data obtained since the issuance of the Draft Report, U.S. EPA in the Final Report finds that, although the trend in the number of inspections was generally downward between 1996 and 1999, more recent data received from Ohio EPA indicate that inspections increased between 1999 and 2000. Moreover, Ohio EPA's current inspection projections are consistent with minimum inspection frequencies recommended in U.S. EPA's Compliance Management Strategy.

U.S. EPA also acknowledges Ohio EPA's efforts to concentrate resources on Title V permit issuance. However, U.S. EPA's protocol for the review of Ohio EPA's enforcement program focused on commitments Ohio EPA made to do inspections in grant agreements and in its federally approved SIP. U.S. EPA assumed Ohio EPA made those commitments in consideration of its Title V and other CAA obligations, and thus did not find it necessary to assess funding levels for inspections for purposes of developing the Draft and Final Reports.

Comment No. 20

Ohio EPA commented on the preliminary finding on Title V permit issuance rates by pointing out that the number of Title V permit applications is fluid and changes because of source shutdowns, new facilities falling under Maximum Available Control Technology (MACT) standards, and the discovery of unpermitted sources. Ohio EPA stated that its initial approach focused on completing initial draft permits which it considered the most difficult and timely portion of the process. In 2001, Ohio EPA changed its approach and concentrated on moving all previously issued draft permits to the final stage.

Petitioners comment that if there is no final permit, no binding permit controls the facility's operations. Petitioners, moreover, assert that the fact that it takes far fewer resources to issue permits in final form shows that the Ohio EPA's failure to issue final permits has been unreasonable.

Response: On March 15, 2002, Ohio EPA committed in writing to a schedule to issue all initial Title V permits by September 1, 2003. U.S. EPA cited Ohio EPA's schedule and commitment in a May 22, 2002 letter responding to citizen comments on Ohio EPA's Title V program. Ohio EPA then met its June 1, 2002 and January 1, 2003 milestones for permit issuance, and as of January 2003, Ohio EPA had issued 75 percent of its initial Title V permits. Ohio Public Interest Research Group (Ohio PIRG) filed a petition for review of the May 22, 2002 letter in the United States Court of Appeals for the Sixth Circuit. In light of the pending litigation, U.S. EPA is not making a final finding on permit issuance in the Final Report.

Comment No. 21

Ohio EPA commented that there is no trend upward or downward in enforcement, simply fluctuations from year to year; that U.S. EPA does not take into account the cases resolved in conjunction with Ohio's Attorney General's Office; and that the Draft Report ignores Ohio EPA's work in investigation and case development.

Petitioners argue that Ohio EPA's comment ignores the many citizens' complaints of Ohio EPA's failure to enforce CAA violators in their communities.

Response: Recent data generated by Ohio EPA indicates that it has substantially reduced the number of unresolved cases that are two years old and older. Those substantial reductions took place in both calendar years 2000 and 2001. By the end of 2001, Ohio EPA reported it had resolved all but one of its administrative CAA cases that would have been two years old in December 2001.

In May 2000, Ohio EPA's DAPC launched a study of the efficiency of its structure. On March 11, 2002, Ohio EPA finalized a new structure for the DAPC based on the study. The new structure will include a section dedicated to enforcement. Ohio EPA anticipates that the new section will result in a more efficient enforcement process with case resolutions being the top priority.

See response to Comment No. 22 below.

Comment No. 22

Ohio EPA commented on U.S. EPA's statement that Ohio EPA enforcement penalties decreased cumulatively. This is merely a natural fluctuation based on nature of cases involved in the calendar year. Each enforcement case has a unique set of facts used to determine an appropriate civil penalty. The variation in cases and case variables means there will be a

variation in outcome. Moreover, U.S. EPA's preliminary finding ignores U.S. EPA's enforcement penalties seeming to drop 98 percent from 1999 to 2000 for Region 5's air program and all Region 5 enforcement penalties dropping 44 percent from the early 1990s to the late 1990's. Ohio EPA highlights these statistics to demonstrate the nature of fluctuation regarding enforcement statistics.

Petitioners indicate that although an opponent of U.S. EPA enforcement actions, Ohio EPA criticizes U.S. EPA's decline in such actions. Ohio EPA fails to see that U.S. EPA performs only backup investigations and enforcement in states with approved CAA programs and therefore should have low numbers if the state is doing its job.

Response: U.S. EPA looked at penalty collection figures over a multi-year period from 1995 through 1999. Generally, the penalties collected by Ohio EPA dropped from one year to the next over this period. However, more recent penalty data indicate that, after a decline in total penalties in calendar year 2000 (in most categories), there was a substantial increase in administrative penalties in 2001 and an increase in total penalties assessed by the Ohio EPA and the Ohio Attorney General's Office combined. U.S. EPA does not expect that penalties will always increase on a year to year basis. Nonetheless, recent trends do show that penalty totals are increasing whereas in earlier years the more common trend was for penalty totals to decrease.

U.S. EPA has long recognized and acknowledged that state agencies like the Ohio EPA are expected to serve a front line role in enforcement of air pollution regulations. U.S. EPA does not expect to duplicate the work done by Ohio EPA and its field offices. However, U.S. EPA does not have only a "backup" enforcement role. U.S. EPA exercises its independent enforcement authority for a various reasons depending on the situation. U.S. EPA may discover violations and choose to pursue their resolution on its own, refer the violations to the state for action, or seek to work jointly with the state in bringing the source into compliance. It is very rare for U.S. EPA to separately enforce against a source after a state has resolved the violations.

Comment No. 23

Ohio EPA commented on U.S. EPA's preliminary finding concerning Ohio EPA's use of administrative modifications of and the opportunity for public review and comment on PSD permits. Ohio EPA stated that many administrative modifications are issued as drafts in order to solicit and consider public comment. Ohio EPA indicated that the Draft Report failed to note that in a draft administrative record provided to Ohio EPA, U.S. EPA questioned 70 specific administrative modifications and Ohio EPA demonstrated all 70 were properly treated as administrative modifications.

Ohio EPA also asserted that U.S. EPA is changing the nature of its complaint regarding administrative modifications. Earlier U.S. EPA cited 70 permit actions it believed might have been mistreated as administrative modifications. The argument has moved from specific actions to public comment on administrative actions. Ohio EPA often allows for a public comment

period for administrative modifications. In determining the need for public comment, Ohio EPA asks (1) whether the modification is administrative or non-administrative and (2) whether a public comment period is necessary. With regard to the second issue, facilities which trigger the "modification" or "major modification" definitions are required to submit a new permit application, and Ohio EPA follows its policies for deciding whether a draft permit is necessary (i.e., for all majors, synthetic minors, MACTs and controversial permits). If the "modification" or "major modification" definitions are not triggered, then the request is determined to be an administrative modification, which does not require a new permit application. Instead, the applicant submits information necessary for Ohio EPA to determine the modification is necessary. Once Ohio EPA makes such determination, then it decides whether to issue a draft permit (with a public comment period), or a direct final permit (without a public comment period). Ohio EPA generally issues an administratively modified permit following the same process the original permit followed, i.e., if the original permit was issued as a draft, then the administratively modified permit is issued as a draft. However, if the administrative modification just corrects typos or formatting errors, then Ohio EPA often modifies the permit without a public comment period. If the changes are insignificant or are not likely to interest the public, then Ohio EPA may issue the permit without pubic comment. These decisions are made on a case-by-case basis keeping in mind the importance of allowing the public the opportunity to comment, if it is likely they will want to comment.

Petitioners indicate that Ohio EPA's claims that public comment is sought on many administrative changes unless it is "insignificant" or "of no public interest" does not rebut U.S. EPA's criticism.

Response: U.S. EPA was concerned that Ohio EPA was modifying permits without providing public notice and comment. U.S. EPA indicated that administrative modifications are appropriate for fixing typographical errors, but any substantive change to the terms of the permit, especially emission limits, must undergo public review and comment.

U.S. EPA had developed a list of 70 administratively modified permits that it was concerned changed substantive conditions without public comment. On December 18, 2002, Ohio EPA sent a letter to U.S. EPA responding to the list of 70 administrative permit modifications. Due to the age of the permitting decisions involved and limitations on Ohio EPA's databases, Ohio EPA could provide information on only about half of the administrative modifications. Upon review of the information in a table attached to the letter, U.S. EPA found that many of the administrative modifications upon which Ohio EPA had information either went through public comment, or the changes involved were not substantive in nature. U.S. EPA's review of the information, as well as review of Ohio EPA's administrative modification process, has shown that the lack of public participation in the administrative modification process is not as widespread as previously assumed, and thus U.S. EPA's concerns on this issue have reduced significantly. However, U.S. EPA continues to call upon Ohio EPA to ensure that it will not

issue through its direct final process any administrative modifications of PTIs that involve substantive changes to permit conditions.

Comment No. 24

Ohio EPA noted that U.S. EPA issued final approval of Ohio EPA's PSD program as part of federally approved SIP October 2001. Ohio EPA thus considers U.S. EPA comments regarding this program resolved.

Response: The Final Report addresses those areas where U.S. EPA's findings concerning Ohio EPA's PSD program were impacted by the final approval of Ohio EPA's PSD SIP.

Comment No. 25

U.S. EPA's conclusion that air enforcement resources are declining for Municipal Solid Waste Landfills (MSWL) is incorrect. Ohio EPA has: (1) conducted outreach to identify potential facilities that must comply with the rules; (2) developed and promulgated rules for existing facilities not subject to New Source Performance Standards (NSPS); (3) coordinated with Ohio EPA's division of solid and infectious waste management; (4) participated in a number of seminars and training; (5) monitored all expected reports and testing under NSPS or Ohio rules; (6) issued guidance to affected parties; and (7) required permits for all affected landfills.

Response: U.S. EPA's preliminary finding was that it had some concern, based on the decline in overall resources devoted to inspections, that Ohio EPA may not be identifying and requiring appropriate NSPS air emission controls at landfills. Ohio EPA has addressed U.S. EPA's concerns about its inspection program by changes and commitments discussed in the Final Report. Moreover, since the issuance of the Draft Report, U.S. EPA has reviewed Ohio EPA's permitting and enforcement activities with respect to the landfill NSPS. On the basis of that review, U.S. EPA has not found any major deficiency of Ohio EPA's implementation efforts with regard to this NSPS.

Comment No. 26

Ohio EPA stated that it operates a state-wide 24-hour hotline to accept reports of spills and air releases. Response staff are available 24 hours per day/365 days per year to respond. Ohio EPA does not need 24-hour complaint lines in all field offices.

Petitioners indicate that Ohio EPA claims its 24-hour spill hot line includes air releases, but this number is not advertised for "after hours" air pollution complaints.

Response: Ohio EPA agreed to more prominently publicize the availability of the 24-hour hotline for complaints about air pollution.

Comment No. *27*
Ohio EPA commented that it recognized the need to ensure that all local air agencies comply with Ohio law by charging only for the cost of copying records requested by the public. Ohio EPA stated that in its contracts with the local air agencies for fiscal year 2002 it required the agencies to have reasonable copying charges for all public record requests.

Response: U.S. EPA agrees with Ohio EPA's comments that it has taken positive steps to deal with this issue.

Comment No. 28
Ohio EPA stated it has no control over the number of complaints received from one year to the next, which leads to a fluctuation in the number of investigations from year to year. Ohio EPA will review ways to increase awareness of the complaint process to the public.
Petitioners indicate that Ohio EPA claims that it responds to all citizen complaints, but does not reveal that it generally does not resolve complaints to the citizen's satisfaction. Ohio EPA's complaint response protocol does not lend itself to uncovering violations and its takes many years of complaints before it does.

Response: U.S. EPA reviewed trends for complaint investigations over the five years prior to the Draft Report, and found that the overall complaints investigated significantly dropped during that period. The reason for the decline is unclear, and it is difficult to draw any conclusion based on this data, especially given differing trends between field offices. The decline may result from fewer complaints to Ohio EPA.

Ohio EPA has taken steps to make more complete information concerning complaint procedures available to the public. In addition, Ohio EPA commits to implement a training curriculum for inspectors and to use a new inspection form. U.S. EPA expects that these commitments will positively impact the investigation of citizen complaints.

Comment No. 29
Ohio EPA commented on the Draft Report's preliminary findings that U.S. EPA indentified no evidence that Ohio EPA inspectors or staff verify accuracy of reports submitted to Ohio EPA, and that Ohio EPA relies heavily on data supplied by the company and should have a Quality Assurance/Quality Control "QA/QC" policy and manual. Ohio EPA states that its staff routinely seeks to verify company-supplied data, and witnesses the annual certification tests of the monitors. Ohio EPA agrees that inspectors rarely take paint samples -- this is not in U.S. EPA guidance and there is too much risk to a paint manufacturer to falsify data if discovered.

Petitioners, in a separate comment, dispute Ohio EPA's contention that it does not need to sample paint or coatings because it believes regulated facilities would not falsify such information. Petitioners note that this belief is common in Ohio EPA, which ignores the

possibility that mistakes can occur and reveals that Ohio EPA does not have a procedure for verifying polluter's representations, and doesn't even think such a procedure is necessary.

Response: U.S. EPA still believes that a QA/QC policy and manual for checking the accuracy and completeness of information supplied by a company could improve Ohio EPA's performance in this area. In addition, U.S. EPA believes an adequate system for tracking regulated facilities' submission of reports is important for ensuring proper review of the reports. Ohio EPA issued guidance for tracking reports and implemented this guidance in its field offices, effective July 1, 2002.

Ohio EPA's commitment to perform more thorough inspections in the future should result in more detailed inspections which will help verify the accuracy of statements made by regulated entities. Additionally, Ohio EPA developed a checklist for its use by its field offices to ensure that entities submit complete Title V deviation reports. When meeting with U.S. EPA to discuss the Draft Report, Ohio EPA agreed to consider expanding that checklist to cover the review of other information submitted by facilities in Ohio.

U.S. EPA believes that sampling paints and coatings is an appropriate part of some inspections of air pollution sources. However, the Ohio SIP and many NSPSs allow a facility to use manufacturers' certifications of volatile organic compound content instead of taking coating samples.

Comment No. 30

Ohio EPA commented on U.S. EPA's preliminary findings concerning Ohio EPA's review of applicability of PSD and NSR. Ohio EPA disagreed that it needs to develop more methods for evaluating whether PSD or NSR requirements apply to unidentified facilities. Ohio EPA noted that emission sources must submit a variety of reports on the emissions from their facilities. Stack test reports and emission inventory reports provide additional information. Ohio EPA said that these reports and other sources of information establish a system for Ohio EPA to find violations of PSD requirements. Ohio EPA noted that it has permitted many sources as synthetic minor sources through Federally Enforceable State Operating Permits (FESOPs) which limit the emissions of those sources. Ohio EPA also commented that it permits emission units at lower emission thresholds than other states. By requiring more sources to enter the permitting process, Ohio EPA is more likely to identify sources subject to major source permitting requirements. Ohio EPA asserts that many of the 76,000 emissions units in the state generate reports that are reviewed for evidence that PSD/NSR requirements apply.

Ohio EPA believes that studies conducted by U.S. EPA show Ohio EPA issues more PSD permits than other states and that "[t]hese figures suggest Ohio EPA is effectively identifying sources which require PSD permits." Ohio EPA also stated it was open to specific guidance from Region 5 on what additional measures other states are using to locate possible PSD sources.

ATTACHMENT F

Petitioners commented that Ohio EPA's reliance on the permit review/inspector's "intimate knowledge" for verifying a facility's representations overlooks several issues including: (1) high personnel turnover at Ohio EPA; and (2) inspectors with long-term relationships with a facility tend to become complacent about its representations. Petitioners indicate that Ohio EPA's justifications of the benefits of "personnel continuity" do not appear to apply to several examples where the investigator became too close to the neighbors of a polluter. Petitioners request that U.S. EPA investigate Ohio EPA's questionable employee transfer practice.

Moreover, petitioners contend that Ohio EPA's comments belie the fact that Ohio EPA did not identify numerous PSD facilities, including the AK Steel Middletown facility; Cinergy Beckjord plant in New Richmond, Ohio; the Redland Facility in Sandusky County; the Marion Steel Corp. facility in Marion, Ohio; and the Protech Facility in Cleveland, Ohio. Petitioners state that Ohio EPA's outreach program is not a substitute for an actual investigation protocol to find recalcitrant polluters.

Response: After the issuance of the Draft Report, U.S. EPA sent Ohio EPA a list of possible ways to identify PSD sources. As noted in the Final Report, Ohio EPA committed to conduct more thorough inspections using a version of the compliance monitoring strategy. In addition, in its fiscal year 2003 air grant application, Ohio EPA committed to an inspection program focusing on more thorough inspections at major sources. The more thorough inspections, known as full compliance evaluations, are more likely to identify process changes that would trigger PSD applicability. In addition, Ohio EPA will be using an improved inspection form with improved instructions, and is developing PSD guidance for inspectors. These measures will further improve Ohio EPA's ability to identify PSD sources.

Ohio EPA's commitment to schedule audits of field offices will also help improve the identification of PSD sources by insuring that field offices are conducting proper inspections, are maintaining and reviewing records, including those that lead to the identification of PSD sources, and are pursuing violations found during inspections and record reviews.

In sum, the activities Ohio EPA described that it uses to identify sources subject to PSD requirements, combined with its specific commitments to improve its discovery of PSD violators, have mitigated U.S. EPA's concern with regard to this allegation.

U.S. EPA's review of Ohio EPA did not include a detailed analysis of statewide turnover rates for air pollution inspectors, nor did the analysis evaluate the possibility that long term relationships between the inspector and a facility lead to complacency. U.S. EPA did note that Ohio EPA's audits of at least one local air pollution agency cite problems that resulted from high turnover. However, many of the suggestions made by U.S. EPA regarding ways that Ohio EPA could improve its program included improved verification of company representations. By improving inspections and the review of reports, Ohio EPA will reduce the possibility that complacency can be an issue.

The events which petitioners identify as involving improper employee transfer practices were not related to Ohio's air program. U.S. EPA did not find in its review of Ohio's air program evidence of improper employee transfers.

Comment No. 31

Ohio EPA commented on the Draft Report's statement that Ohio EPA figured the size of violator to be equal to some percentage of gross sales. Ohio EPA stated that this is only used for privately held companies where financial information is confidential. All others are based on a company's net assets. Ohio EPA was never advised that its approach for privately held companies is inappropriate.

Response: As a result of continuing discussions with Ohio EPA, it has provided U.S. EPA with a description of how it calculates penalties for failure to obtain PTIs and PTOs. Until U.S. EPA can review the use of this description for calculating penalties over a period of time, U.S. EPA cannot determine whether this description will address its concerns.

Comment No. 32

Ohio EPA believes it maintains adequate documentation for PSD permits at district and LAA offices. PTI files typically contain a copy of the application, a copy of all correspondence, a record of the history of the PTI processing, calculations necessary for the permit, a copy of the permit recommendation, comments from the public, the agency's response to comments, basic computer modeling performed, and other pertinent records. Ohio EPA is happy to work with Region 5 to ensure federal reviewers have the information they need.

Response: For purposes of aiding its oversight of Ohio EPA's PSD program, U.S. EPA continues to remain concerned that Ohio EPA maintain adequate documentation in permitting files to memorialize how it made permitting decisions. The issue of adequate documentation was not among the petitioners' allegations, and by itself, does not constitute evidence of failure to issue PSD permits according to the requirements of the PSD SIP.

Comment No. 33

Ohio EPA disagrees that it does not allow adequate public comment periods on draft PSD permits because it cannot provide 30-day extensions to the comment period. Ohio EPA believes that public input is an important part of the permitting process. Ohio EPA places notices in local papers announcing the receipt of a PTI application months in advance of issuance, places notices in local papers when it issues a draft permit, notifies any known interested parties, and schedules public hearings when Ohio EPA gets enough interest. Ohio EPA grants extensions to comment periods on a case-by-case basis, considering a number of factors cited in its comments. Ohio EPA reviews all comments. The final decision on the permit is noticed in newspapers again and once the permit is issued, citizens have the opportunity to appeal the permit if they still have concerns. Ohio EPA believes its permitting process has many opportunities for interested parties to become involved, and that Ohio EPA spends significant resources and time

in responding to comments, including many hours on the phone and in meetings outside the formal process to provide citizens an understanding of the permits and any necessary feedback. As for the specific cases in the Draft Report, Ohio EPA indicated requests for extensions of the public comment period were denied after careful review of the factors cited in the comments.

Response: At the time of the Ohio program review, Ohio EPA implemented a delegated federal PSD program. The federal regulations required U.S. EPA, and in this case its delegatee Ohio EPA, to grant an extension of time for review of and comments on a draft permit if the commenter who requested additional time demonstrated the need for such time. The Sierra Club notified U.S. EPA of two instances where Ohio EPA failed to grant a formal, written request to extend the 30-day public comment period. U.S. EPA found no other instances where Ohio EPA failed to address a request for a comment period extension, nor were other instances identified by commenters during the public comment period. Thus, based on the two identified instances alone, there is no basis to conclude that Ohio EPA is systemically failing to address comment period extension requests. Moreover, since issuing the Draft Report, U.S. EPA approved Ohio EPA's PSD SIP. The Ohio PSD SIP does not require Ohio EPA to grant a request to extend the 30-day comment period. Nonetheless, U.S. EPA believes that it is important for the public to have adequate time to review and comment on complex PSD permits, and recommends that Ohio EPA use its discretionary authority to allow such extensions of time in appropriate circumstances.

Comment No. 34

Ohio EPA has attempted to gather as much information as possible on some sources installed prior to delegation of NSPS to Ohio EPA. Ohio EPA supplied additional information under a separate cover.

Response: U.S. EPA asked Ohio EPA for information regarding NSPS determinations for 14 facilities applying for Title V permits. On October 15, 2001, Ohio EPA provided information on the 14 sources which showed that they were not subject to NSPS.

Comment No. 35

Ohio EPA commented on the Draft Report's preliminary finding that the permitting files U.S. EPA reviewed generally lacked documentation of Ohio EPA's decision making process. Ohio EPA believes the vast majority of files have adequate documentation of the key events involved in Title V permit processing, and contain emission and monitoring reports. Occasionally information is removed by an outside party during file review or files are not returned to their original order. Ohio EPA will work with U.S. EPA to ensure files identified by U.S. EPA have the necessary information.

Response: U.S. EPA is encouraged that Ohio EPA will work to ensure that identified files have the necessary information. For purposes of aiding its oversight of Ohio EPA's PSD program, U.S. EPA continues to remain concerned that Ohio EPA maintain adequate documentation in

permitting files to memorialize how it made permitting decisions. The issue of adequate documentation was not among the petitioners' allegations, and by itself, does not constitute evidence of failure to issue PSD permits according to the requirements of the PSD SIP.

Comment No. 36

Ohio EPA commented on the Draft Report's preliminary finding that Ohio EPA relies upon AP-42 industry standards too much. Ohio EPA agrees that exclusive reliance upon AP-42 is not appropriate. Ohio EPA uses the best emission factor available and requires emission testing for significant or unique emission units. Ohio permits many more emission units than most other states. Ohio EPA uses AP-42 only when other, more reliable emission factors are not available. AP-42 is used often for smaller emission units. Ohio EPA relies heavily upon site-specified data and follow-up testing to confirm the emission factor used.

Response: U.S. EPA was concerned by a possible undue reliance on the AP-42 emission factors in permitting decisions. Ohio EPA's response to the Draft Report clarifies its policy on emission factor data and prioritizes the use of this information from site-specific information to AP-42. U.S. EPA commends Ohio EPA for such a policy. We recommend that Ohio EPA document the use of this policy in the supporting documentation for each permit.

Comment No. 37

Ohio EPA agrees with U.S. EPA's suggestion to pay special attention to directly informing interested parties of a hearing in a timely fashion. It is Ohio EPA's practice to directly inform any requesting party of a public meeting or hearing. Ohio EPA will continue this courtesy notification.

Response: U.S. EPA commends Ohio EPA for this notification practice.

Comment No. 38

Ohio EPA commented on the Draft Report's preliminary finding that Ohio EPA has Title V permit applications available on its website but requires non-web linked members of the public to give 2 weeks notice before reviewing Ohio EPA's paper files. This creates difficulties when comment periods last 30 days. Ohio EPA responded that Ohio EPA has procedures to make documents available as soon as possible.

Response: The preliminary finding was based on the concern that the public have access to relevant documents during the 30-day comment period. The PSD regulations, 40 C.F.R. § 124.13, and the Title V regulations, 40 C.F.R. § 70.7(h), allow for this notice and comment period. Regarding these provisions, Ohio EPA's PSD and Title V programs meet the legal requirements. Ohio EPA commented that its district offices and local air agencies have procedures to ensure that public information requests are handled in an equitable and efficient manner. U.S. EPA encourages Ohio EPA to continue to ensure that these procedures are

implemented and that documents are made available in a timely fashion to allow the public to take advantage of the full 30-day public comment period.

Comment No. 39

Ohio EPA commented that it makes data from continuous emission monitors (CEMs) available upon request, but will check into the resources and procedures required to make data from CEMs available on the Ohio EPA website quarterly.

Response: Ohio EPA committed to evaluate by the end of the year the feasibility of placing CEMs data on its website. In a December 12, 2002 letter, Christopher Jones, Director of Ohio EPA, stated that meeting this commitment will be somewhat delayed.

Comment No. 40

Ohio EPA commented on the Draft Report's preliminary findings concerning vacancies. Ohio EPA stated that it believes the number of vacant positions at any one time cannot be used to assess the degree to which knowledgeable staff are in place. Ohio EPA pointed out that some vacancies represent new positions and other vacancies are created due to promotions. In the case of promotions, experienced staff are not lost. Ohio EPA believes that the 20 percent vacancy rate cited by U.S. EPA was based on an Ohio EPA DAPC June 1999 vacancy level of 26 vacancies. Of the 26 vacancies, only 10 represented staff actually leaving Ohio EPA's air program.

Ohio EPA noted that it has been increasing its staff over the years reviewed and a portion of the vacancy rate is due to positions posted for college interns, promotions and newly created positions.

Ohio EPA also commented that U.S. EPA failed to acknowledge Ohio EPA's extensive effort to monitor the Cleveland local air agency and provide training to its staff. That effort was necessary since the Cleveland agency historically has had high turnover and vacancy rates.

Petitioners comment that Ohio EPA's response to the Draft Report does not rebut U.S. EPA's point that there is a "learning curve" while new employees become familiar with job duties. This criticism is valid regardless of the reason for personnel change.

Response: After review of the information Ohio EPA submitted in its comments, U.S. EPA agrees that one cannot look solely at vacancy rates as a means of determining if sufficient experienced staff are present to maintain a fully functional air enforcement program. Based on Ohio EPA's comments, it appears that some of Ohio EPA's "vacancy" postings for promotions and new positions are temporary and do not represent actual loss of staff. U.S. EPA finds that vacancy rates alone are not an accurate measure of program effectiveness for purposes of reviewing Ohio EPA's program against the CAA withdrawal criteria.

Comment No. 41

In its response to U.S. EPA's preliminary findings, Ohio EPA noted it has taken several actions to improve staff training and has participated in a number of training activities over several years. It has established a training committee in the DAPC. Ohio EPA cites 16 training opportunities that were ignored by U.S. EPA. Ohio EPA disagrees that training must be completely consistent throughout the field offices and stated that by allowing customized training programs within each field office it recognizes the needs of those offices.

Response: After release of the Draft Report, Ohio EPA provided U.S. EPA with a draft description of the minimum training curriculum for new entry level employees working in permitting and enforcement areas in Ohio. Ohio EPA indicated that it would solicit comment on the draft description from its field offices and U.S. EPA. Ohio EPA committed to require its field offices to implement the curriculum by including training requirements in future contracts with LAAs and by requiring that Ohio EPA offices include the training in professional development plans for staff. In addition, Ohio EPA has implemented a basic NSR training course for its staff, and is developing an advanced NSR training course planned to be held in 2003.

Ohio EPA has taken steps to meet U.S. EPA's concerns. U.S. EPA will continue to work with Ohio EPA on its training commitments for enforcement staff.

Comment No. 42

Ohio EPA indicated in its comments on the Draft Report that it changed its application instructions to require an applicant for a Title V permit who submits an application with confidential business information (CBI) also to submit a non-confidential version of the application. Ohio EPA will continue to provide the non-confidential applications for public review. In its comments, Ohio EPA also stated that to date it had received 103 Title V applications containing CBI, and only 3 of these applicants failed to submit a non-confidential version of the application. Ohio EPA stated that it is working with the remaining three entities to obtain a public version of the applications.

Response: These measures mitigate U.S. EPA's concern that all Title V permit applicants submit non-confidential permit applications for public review.

Comment No. 43

Ohio EPA commented that it reports quarterly to U.S. EPA the information U.S. EPA required in the past on NSPS, NESHAP, and PSD and that the Draft Report was the first indication that U.S. EPA might find these reports deficient.

Response: The Draft Report indicated that, although Ohio EPA submits annual and quarterly reports, these reports did not contain all required information. U.S. EPA sent a detailed list of CAA reporting requirements to Ohio EPA. U.S. EPA will work with Ohio EPA to revise

existing NSPS and Part 61 NESHAP delegation agreements and to clarify reporting issues related to those delegated programs.

In addition, Ohio EPA, in consultation with U.S. EPA, developed an electronic reporting system for reporting certain information to U.S. EPA. That system began operation in July 2002 with some subsequent delays due to necessary changes. Moreover, in Ohio EPA's FY 2003 grant workplan, Ohio EPA committed to implement an electronic reporting system to report data directly into U.S. EPA's AIRS database. Ohio's new system will maintain a complete and accurate invention for all regulated sources. Information concerning inspections, compliance status, and enforcement will be submitted on a monthly basis.

Comment No. 44

Ohio EPA commented on U.S. EPA's preliminary finding that Ohio EPA's statements of basis included in draft Title V permits are inadequate. Ohio EPA indicated that it follows the federal regulations and the statement of basis was approved by U.S. EPA -- a fact omitted from the report.

Petitioners argue that Ohio EPA's comment does not address the substance of U.S. EPA's preliminary finding that Ohio EPA failed to fill in the form with appropriate case-by-case information.

Response: 40 C.F.R. § 70.7(a)(5) requires that a Title V permitting authority provide a statement that sets forth the legal and factual basis for all draft Title V permit conditions (including references to the applicable statutory or regulatory provisions). U.S. EPA provided guidelines to Ohio EPA about an adequate statement of basis in a December 20, 2001 letter. This letter outlines five areas to improve Ohio EPA's statements of basis. U.S. EPA addressed Ohio EPA's statements of basis in a May 22, 2002 letter responding to citizen comments on Ohio EPA's Title V program. Ohio EPA then changed its statement of basis form to incorporate some of U.S. EPA's guidelines. Ohio PIRG filed a petition for review of U.S. EPA's May 22, 2002 letter in the United States Court of Appeals for the Sixth Circuit. In light of the pending litigation, U.S. EPA did not make any final findings on this issue in its Final Report.

Comment No. 45

Ohio EPA commented on U.S. EPA's preliminary finding that Ohio EPA is not including insignificant sources in Title V permits. Ohio EPA notes that the Draft Report does not state that U.S. EPA only recently changed its position on this requirement. Ohio EPA believes good public policy does not support inclusion of these emission sources, which by their very nature are insignificant.

Petitioners criticize Ohio EPA's comment by arguing that Ohio EPA must properly account for insignificant sources whether or not U.S. EPA makes its concerns about a failure to do so known to Ohio EPA.

Response: U.S. EPA issued a notice of deficiency (NOD) to Ohio on April 10, 2002, 67 Fed. Reg. 19175 (April 18, 2002), finding the Ohio Title V program deficient because Ohio's insignificant emission unit regulations are not consistent with Title V requirements. Ohio EPA and two industry groups, the Ohio Chamber of Commerce and the Ohio Chemistry and Technology Council, filed petitions for review of the NOD in the United States Court of Appeals for the Sixth Circuit. U.S. EPA need not initiate withdrawal proceedings on this issue at this time because of the process outlined in the NOD and the pending litigation.

Comment No. 46

Ohio EPA commented it does not need to issue permits for asbestos removal activities under its permitting program. Ohio EPA has an enforceable asbestos renovation/demolition notification program, modeled on U.S. EPA regulations, that covers removal activities.

Response: Ohio adopted a version of the NESHAPs asbestos standards through state regulations that do not include the 1990 revisions to the federal NESHAP regulations. Ohio EPA has proposed revisions to its asbestos regulations to align them with the federal asbestos NESHAP regulations.

Comment No. 47

Ohio EPA notes that U.S. EPA is critical of Ohio EPA's public participation processes, but U.S. EPA never interviewed staff at Ohio EPA's Public Interest Center (PIC). Ohio EPA is providing detailed information on its extensive public participation processes. Ohio EPA's PIC had over 10,000 separate contacts with citizens in 2000.

Response: U.S. EPA recognized this comment in the Final Report. In addition, in November 2001, the PIC issued a new version of a brochure titled "Public Participation at Ohio EPA." The brochure was revised to address U.S. EPA's comments on the availability of information for citizens on how to file complaints. The brochure now includes information on how to file complaints and a detailed description of the verified complaint process.

Comment No. 48

Ohio EPA commented on the Draft Report's preliminary finding that Ohio EPA has not implemented a Phase II acid rain program and has not enacted legislation and adopted rules. Ohio has the necessary statutory authority for acid rain regulations, adopted Phase I rules and Phase II SO2 rules, and issued 110 acid rain permits. Phase II NOx rules are undergoing public comment.

Other commenters specifically raised the lack of acid rain rules as a concern.

Response: U.S. EPA agrees that Ohio EPA had implemented Phase II SO2 standards and incorporated them into acid rain permits. Since issuance of the Draft Report, Ohio EPA

promulgated the necessary rules for the required Phase II NO_x program. On October 2, 2002, Ohio EPA submitted the revised acid rain rules for U.S. EPA review and rulemaking action.

Comment No. 49

Ohio EPA indicated that U.S. EPA expressed concern that Ohio EPA had not provided criteria for monitoring source compliance as part of its Title V permitting program as required by 40 C.F.R. § 70.4(b)(4)(ii), and that Ohio EPA referenced certain commitments in then existing Section 105 agreement, but earlier agreements are no longer acceptable. Ohio EPA stated that this is the first time U.S. EPA expressed concern about a 7-year old document, reviewed and approved 7 years ago. Ohio EPA requests that the Draft Report be amended to note U.S. EPA never raised this issue previously.

Response: At present, Ohio EPA has not submitted its criteria for monitoring source compliance as part of its Title V program. Ohio EPA, however, is implementing an acceptable compliance monitoring strategy, which will address full compliance evaluations for Title V facilities, as described in its FY 2003 grant workplan.

Comment No. 50

Ohio EPA states that U.S. EPA is wrong in the Draft Report for making the preliminary finding that Ohio EPA failed to get U.S. EPA approval before subdelegating air program responsibility to local air agencies. Ohio EPA did not subdelegate its authority. U.S. EPA has known about these subcontractural relationships since the delegation of authority to Ohio began and did not notify Ohio EPA previously that a subdelegation agreement was necessary.

Response: U.S. EPA reviewed the draft FY 2002 LAA contract, dated January 31, 2001. The contracts are identified as "delegations" and should be treated as such under the delegation agreement between U.S. EPA and Ohio EPA. Ohio EPA has submitted its draft standard contract with a local air agency to U.S. EPA. In the future, U.S. EPA will review Ohio EPA's draft contract with a local air agency for approval under NESHAPs and NSPS delegations.

Comment No. 51

Ohio EPA asserts that the cumulative effect of errors in the Draft Report creates an impression of a troubled program--an impression that is in error. Ohio EPA is ready to work with U.S. EPA to improve the program that is already effective. The Draft Report does a serious disservice to Ohio EPA by impairing confidence of Ohio citizens. The credibility of both agencies can be repaired only by correction of errors and issuance of a fair final report. Ohio EPA is concerned that U.S. EPA never addressed actual air quality.

Other commenters expressed concerns regarding Ohio's air quality.

Response: In its Draft Report, U.S. EPA addressed the petition allegations, and did not intend to create any impression by presenting its preliminary findings. U.S. EPA has corrected errors in

the preliminary findings and relied upon additional information provided during and after the public comment period. Ohio EPA has committed to make a number of changes to improve its air program. Ohio EPA is correct that U.S. EPA did not address air quality data and did not assess all the noteworthy achievements of Ohio EPA's air program over the many years it has been in existence. It should be noted, however, that monitored air quality or demonstrations of attainment with the National Ambient Air Quality Standards are not factors for consideration under any of the CAA programs' withdrawal criteria.

Comment No. 52

Ohio EPA is concerned that by using the results of its audits of field offices in a review of the withdrawal petition U.S. EPA is discouraging future performance audits and self disclosures. Moreover, Ohio EPA notes that for the last two years, Ohio EPA temporarily suspended the normal field office audit program to provide assistance to the Cleveland Local Air Agency.

Petitioners contend that U.S. EPA has a right to know about these audits, especially given that much investigatory and enforcement authority has been delegated to these agencies. Petitioners note that Ohio EPA does not deny the factual findings of the audits.

Response: The field audits conducted by Ohio EPA make a significant contribution to ensure that an effective enforcement program is in place and to help field offices improve their performance in carrying out delegated responsibilities. Ohio EPA agreed to resume regular audits of its field offices and plans to audit one field office each quarter of the year. Ohio EPA completed an audit of the Canton LAA on October 2, 2002.

Comment No. 53

Ohio EPA commented on the Draft Report's preliminary finding that Ohio EPA is not routinely conducting level 2 inspections. Ohio EPA stated that it routinely makes these inspections. Ohio EPA provided a table showing the number of performance tests observed and opacity observations. Ohio EPA indicated that it formed a workgroup to update the inspection form and instructions; both of which will be designed to meet the minimum inspection requirements for both U.S. EPA and Ohio EPA.

Response: The file records indicate that Ohio EPA either did not consistently conduct level 2 inspections routinely at all facilities where such inspections were required, or did not adequately document all level 2 inspections conducted. Records of opacity observations or records of performance tests that Ohio EPA witnessed do not establish that a level 2 inspection was performed at a facility. Moreover, Ohio EPA audits of LAAs have found a lack of level 2 inspection documentation in LAA files. Ohio EPA and the LAAs, however, may have performed level 2 inspections that were not adequately described in the inspection records.

Although the Draft Report identified a concern regarding the number of inspections, particularly level 2 inspections, Ohio EPA significantly changed its program in light U.S. EPA's 2001

compliance monitoring strategy (CMS) policy and committed to make additional changes that address U.S. EPA's preliminary findings. Ohio EPA committed to revise the way it conducts inspections by adopting an acceptable Compliance Monitoring Strategy (CMS) when selecting facilities for inspection and when conducting inspections. Under its fiscal year 2003 grant workplan CMS commitment, Ohio EPA is committing to perform a significant number of the more thorough inspections known as full compliance evaluations. Ohio EPA's CMS commitments, including the commitment to conduct full compliance evaluations, should result in inspections of far greater thoroughness than even a complete level 2 inspection would provide. In addition, Ohio EPA committed to use a revised inspection form and instructions in Ohio EPA and LAA offices. U.S. EPA expects that the revised inspection form and instructions will improve Ohio EPA's ability to identify violations during inspections.

Comment No. 54

A commenter noted that its group had complained about nine facilities to U.S. EPA because Ohio EPA had not addressed the group's concerns regarding the facilities' compliance. The commenter indicates that U.S. EPA cited the majority of these facilities for violations. The commenter asks why U.S. EPA has not cited Ohio EPA for violating its SIP for allowing these facilities to operate without valid permits.

Response: Based on the allegations made in the petition, U.S. EPA conducted a comprehensive five year review of Ohio EPA's files and activities, using protocols designed to investigate Ohio EPA's programs in light of the allegations and withdrawal criteria. Part of this review focused on Ohio EPA's implementation of its permitting obligations under the Title V, PSD, and nonattainment NSR programs. The final findings of this review are presented in the Final Report. U.S. EPA does not agree that the existence of violating facilities within Ohio means that Ohio EPA is improperly implementing CAA programs. It is reasonable to expect that in any given regulatory universe there will be violating entities. Their existence does not necessarily demonstrate a systemic failure of the regulator to implement program requirements on the majority of regulated entities.

To the extent that U.S. EPA identified in that review certain instances of inadequate program implementation with respect to certain facilities, U.S. EPA has identified those instances in its report or in the administrative record. U.S. EPA believes this overall program review was sufficient in analyzing whether there is a factual basis to initiate withdrawal proceedings. Moreover, the comprehensive program review provides a much clearer picture of Ohio EPA's overall program implementation than a focus on specific Ohio EPA actions with respect to a set of facilities.

Comment No. 55

A commenter complained that there is a lack of technical assistance to local organizations that want to get involved, and a need for more access to public participation and documentation. There is a lack of Ohio EPA concern with environmental justice in the air program. The

commenter's organization has not heard about follow-up to a First Energy Lakeshore Title V permit for Cleveland. They do not know if it was forwarded to U.S. EPA so that it could have the opportunity to object.

Response: U.S. EPA recognizes the concerns raised with respect to document availability and Ohio EPA staff assistance. Ohio EPA stated that it is working with the Cleveland agency to improve the agency's overall performance. Ohio EPA also commented that its policy is to have a permit review staff member from the appropriate field office at public hearings on draft Title V permits.

The issue of environmental justice (EJ) is a priority for U.S. EPA. U.S. EPA is working to develop guidance for permitting authorities since we recognize that EJ communities often do need extra resources to effectively participate in the permitting process. However, this concern needs to be addressed to Ohio EPA as the permitting authority since the U.S. EPA has no authority to mandate such assistance. Ohio EPA is beginning to consider many of these concerns in its approach to permitting facilities in EJ areas.

Ohio EPA submitted a draft Title V permit for the Cleveland Electric Illuminating Co.'s Lake Shore Plant on February 25, 1999.

Comment No. 56

A commenter expressed frustrations with Ohio EPA regarding emissions from Cincinnati Specialties and Waste Management.

Response: Although the purpose of U.S. EPA's review was not to address environmental issues at specific sites within Ohio, we are forwarding all complaints about continuing problems at specific sites to those within U.S. EPA, Ohio EPA, and local agencies who are responsible for addressing site specific issues. While U.S. EPA's review of Ohio EPA's air enforcement programs included a review of Ohio EPA's inspection and enforcement work at certain facilities, including some cited in the petition, U.S. EPA's findings are based on a more comprehensive review that covers a broad range of enforcement activities within the air program. As discussed in the Final Report, Ohio EPA has implemented, or agreed to implement, a number of changes to its air programs, which are expected to enhance Ohio EPA's efforts to address CAA violators.

Comment No. 57

A commenter stated that Ohio EPA does not adequately enforce against toxic emissions violations. Ohio EPA acknowledges violations, but then says the companies are now in compliance. Ohio EPA never explains any violation investigations, and ignores policies entrusted to it. Other commenters complained about Ohio EPA's responsiveness to its citizens.

Response: In its response to U.S. EPA's Draft Report, Ohio EPA said that it is developing and implementing community relations training to increase staff effectiveness in answering questions

in a public forum, to increase staff responsibilities in interacting with the public and to enhance understanding of the public involvement process. Ohio EPA has also made a number of commitments, which are discussed in the Final Report, to enhance its efforts to address CAA violators.

Comment No. 58
A commenter stated that Ohio EPA has overestimated utility rate increases due to the NOx SIP and the commenter has received no response to his request for Ohio EPA assumptions associated with the above rate calculations.

Response: Issues relating to allegedly overestimated utility rate increases resulting from Ohio EPA's NOx SIP are outside the scope of the petition review.

Comment No. 59
Commenters indicated that HCDOES is not responsive to citizens' concerns. A commenter noted that HCDOES took over 100 samples of particulate matter emissions from an AK Steel facility, but that sampling was ineffectual in demonstrating actual public health risk from these emissions.

Response: As part of the comprehensive review of petitioners' concerns, U.S. EPA visited HCDOES and prepared a trip report, which is in the administrative record. U.S. EPA relied upon findings from this trip report to develop its final findings.

Although the purpose of U.S. EPA's review was not to address environmental issues at specific sites within Ohio, we are forwarding all complaints about continuing problems at specific sites to those within U.S. EPA, Ohio EPA, and local agencies who are responsible for addressing site specific issues. U.S. EPA did note that, in contrast to the situation described, in most cases, Ohio EPA takes few samples. U.S. EPA did not do a detailed review of how samples were analyzed by Ohio EPA and its local agencies. The issue raised was not identified previously in the petition as a specific deficiency in Ohio EPA's enforcement program.

Comment No. 60
A commenter asked how U.S. EPA rates Ohio EPA performance on a scale from 1 to 10.

Response: As stated at a public meeting on November 13, 2001, the criteria for determining whether there is a basis to initiate proceedings to withdraw U.S. EPA's approval or delegation of Ohio EPA's CAA programs is not performance as rated on a 1 to 10 scale. U.S. EPA was asked to review Ohio EPA's performance with respect to the criteria for program withdrawal and a performance rating on an arbitrary scale is not relevant to program withdrawal.

ATTACHMENT F

Comment No. 61

A commenter expressed health concerns regarding emissions from sixty poultry buildings within 1.5 miles of her residence in Stark County. The commenter stated that Park Farms operates these buildings. The commenter complained that the local health authority cannot be relied on to adequately address complaints.

Response: Although the purpose of U.S. EPA's review was not to address environmental issues at specific sites within Ohio, we are forwarding all complaints about continuing problems at specific sites to those within U.S. EPA, Ohio EPA, and local agencies who are responsible for addressing site specific issues. While U.S. EPA's review of Ohio EPA's air enforcement programs included a review of Ohio EPA's inspection and enforcement work at certain facilities, including some cited in the petition, U.S. EPA's findings are based on a more comprehensive review that covers a broad range of enforcement and permitting activities within the air program. As discussed in the Final Report, Ohio EPA has implemented, or agreed to implement, a number of changes to its air programs, which U.S. EPA expects will enhance Ohio EPA's efforts to address CAA violators.

Comment No. 62

A commenter asked how much money Ohio EPA receives and asked if U.S. EPA is concerned where the money is going if it has noted a decline in inspections.

Response: Ohio EPA's use of its funding was not a part of the review conducted to address the petition. There is a regular state grant review process in Region 5 which is not related to the Ohio petition review. Ohio EPA's inspection rate is an area specifically addressed in the Final Report.

Comment No. 63

A commenter complained that Ohio EPA has not adequately addressed ten years of the commenter's complaints about odor from Rohm & Haas.

Response: Although the purpose of U.S. EPA's review was not to address environmental issues at specific sites within Ohio, we are forwarding all complaints about continuing problems at specific sites to those within U.S. EPA, Ohio EPA, and local agencies who are responsible for addressing site specific issues. While U.S. EPA's review of Ohio EPA's air enforcement programs included a review of Ohio EPA's inspection and enforcement work at certain facilities, including some cited in the petition, U.S. EPA's findings are based on a more comprehensive review that covers a broad range of enforcement activities within the air program. As discussed in the Final Report, Ohio EPA has implemented, or agreed to implement, a number of changes to its air programs, which are expected to enhance Ohio EPA's efforts to address CAA violators.

Comment No. 64
A commenter indicated that lottery money should be re-allocated to support the Clean Air Act.

Response: The commenter's letter indicated that two people came to the door and solicited money for the EPA Clean Air Act. Neither U.S. EPA nor the Ohio EPA engage in such solicitation for funds. The question of whether state lottery revenues could be used to combat air pollution is beyond the scope of the petition review.

Comment No. 65
A commenter raised concerns regarding emissions from the WTI hazardous waste incinerator and stated that U.S. EPA's national ombudsman recommended shutting down the plant for six months to allow further study. The commenter asked how many pounds of mercury were released during test burns.

Response: Although the purpose of U.S. EPA's review was not to address environmental issues at specific sites within Ohio, we are forwarding all complaints about continuing problems at specific sites to those within U.S. EPA, Ohio EPA, and local agencies who are responsible for addressing site specific issues. While U.S. EPA's review of Ohio EPA's air enforcement programs included a review of Ohio EPA's inspection and enforcement work at certain facilities, including some cited in the petition, U.S. EPA's findings are based on a more comprehensive review that covers a broad range of enforcement activities within the air program. As discussed in the Final Report, Ohio EPA has implemented, or agreed to implement, a number of changes to its air programs, which are expected to enhance Ohio EPA's efforts to address CAA violators.

As an U.S. EPA representative noted during the public meeting on November 13, 2001, the Region 5 office of U.S. EPA has given information to the national ombudsman regarding the assumptions made in his original report.

Comment No. 66
A commenter indicated that Ohio EPA employs few workers to enforce the CAA, performs few air inspections, does not respond to citizen complaints, and does not check for accuracy of industry statements. Another commenter expressed concerns regarding Ohio EPA's lack of manpower to enforce the CAA, and the decline in air inspections and penalty collection.

Response: The data U.S. EPA relied upon in the Draft Report on the number of Ohio EPA employees carrying out the air programs did not account for local agency employees who perform air enforcement duties in Ohio. The number of employees at Ohio EPA and local agencies assigned to air programs is not significantly different than the number Ohio EPA stated it would need to run its air programs. The Final Report addresses these issues. As noted elsewhere in these responses to comments, Ohio EPA provided additional information and agreed to make changes to its air enforcement program which address many of U.S. EPA's preliminary findings. Ohio EPA committed to improve its air inspection program and initiated

improvements that should result in better verification of the accuracy of statements made by the regulated community.

Comment No. 67

A commenter complained that Ohio EPA issued a notice of violation on an air permit for Buckeye Egg and nothing has been heard since then. The commenter asked if U.S. EPA looked at Title V permits for concentrated animal feeding operations (CAFOs).

Response: Although the purpose of U.S. EPA's review was not to address environmental issues at specific sites within Ohio, we are forwarding all complaints about continuing problems at specific sites to those within U.S. EPA, Ohio EPA, and local agencies who are responsible for addressing site specific issues. While U.S. EPA's review of Ohio EPA's air enforcement programs included a review of Ohio EPA's inspection and enforcement work at certain facilities, including some cited in the petition, U.S. EPA's findings are based on a more comprehensive review that covers a broad range of enforcement and permitting activities within the air program. Part of this comprehensive review focused on Ohio EPA's actions to ensure that permits are issued according to CAA requirements. As discussed in the Final Report, Ohio EPA implemented, or agreed to implement, a number of changes to its air programs, which are expected to enhance Ohio EPA's efforts to address CAA violators.

With respect to Buckeye Egg, U.S. EPA issued a CAA Notice of Violation (NOV)/Finding of Violation (FOV), alleging violations of PSD and Title V and also a unilateral order on October 10, 2002, to comply with testing requirements.

The petition raised no issues regarding Title V permitting requirements for CAFOs, and U.S. EPA's review of the Ohio program produced no findings concerning Title V permitting of CAFOs.

Comment No. 68

The Regional Air Pollution Control Authority (RAPCA) suggests that U.S. EPA document the entire enforcement program and promote the advantages of cooperation among all levels of government.

Response: The protocol used by U.S. EPA to conduct the air enforcement portion of the review was intended to result in a statewide review that looked at the performance of Ohio EPA and local air agencies in Ohio. Although the review team could not visit every Ohio EPA field office in Ohio, data on the performance of those offices was included in U.S. EPA's review. U.S. EPA agrees that there are great advantages to cooperation among all levels of government. However, the issues raised by the petitioners did not identify a lack of cooperation among various levels of government as a problem in Ohio. As a result, we did not focus on that issue during our review and we did not comment on that issue in our preliminary findings.

ATTACHMENT F

Comment No. 69
RAPCA suggests the U.S. EPA pursue the questions regarding Ohio EPA's recent handling of asbestos demolition inspections in local jurisdictions where the owner of the demo property is the local agency's governing body.

Response: Ohio EPA performs asbestos inspections in Ohio as a delegated responsibility and as part of its program to enforce its asbestos regulation. U.S. EPA intends to work with Ohio EPA to update the delegation agreement that covers the asbestos NESHAP and other NESHAP regulations that are delegated. To the extent the comment raises matters relevant to the on-going relationship among U.S. EPA, Ohio EPA, and the Ohio local agencies in managing environmental programs in Ohio, U.S. EPA will consider it in the appropriate forum.

Comment No. 70
RAPCA suggests that Region 5 target 105 money for local toxics programs on an individual basis. Such money should then be disbursed through a direct grant to the local doing the work.

Response: The suggestion that Region 5 hold grant money and provide it to local air agencies is an issue outside of the scope of the review conducted by U.S. EPA. To the extent this comment raises matters relevant to the on-going relationship among U.S. EPA, Ohio EPA, and the Ohio local agencies in managing environmental programs in Ohio, U.S. EPA will consider it in the appropriate forum.

Comment No. 71
RAPCA asks U.S. EPA to take definitive efforts to include local agencies in the decision-making process of permitting, as they are disappointed in Ohio EPA's review process and issuance rate.

Response: This comment falls beyond the scope of review. However, local agencies are encouraged to attend the monthly permitting conference calls so as to help facilitate communication among U.S. EPA, Ohio EPA, and the local agencies.

Comment No. 72
RAPCA recommends a full accounting of how Title V monies are being allocated, as two audits revealed local agencies subsidize the program beyond Ohio EPA payment levels. Audits fail to document state expenses. Local agencies want a full accounting of how Title V monies allocated to the Ohio EPA's Director's office are spent.

Response: This comment falls beyond the scope of the review. To the extent the comment raises matters relevant to the on-going relationship among U.S. EPA, Ohio EPA, and Ohio local agencies in managing environmental programs in Ohio, U.S. EPA will consider it in the appropriate forum.

Comment No. 73
RAPCA asks that U.S. EPA Region 5 work directly with both Ohio EPA and local agencies to identify data entry responsibilities regarding the national AIRS database.

Response: This comment falls beyond the scope of the review. To the extent the comment raises matters relevant to the on-going relationship among U.S. EPA, Ohio EPA, and Ohio local agencies in managing environmental programs in Ohio, U.S. EPA will consider it in the appropriate forum.

Comment No. 74
RAPCA supports U.S. EPA's most recent CMS and suggests U.S. EPA work directly with local agencies to obtain agreements on the implementation of the federal CMS. U.S. EPA must work with local agencies to assure that CMS is implemented in Ohio.

Response: This comment falls beyond the scope of the review. To the extent the comment raises matters relevant to the on-going relationship among U.S. EPA, Ohio EPA, and Ohio local agencies in managing environmental programs in Ohio, U.S. EPA will consider it in the appropriate forum.

Comment No. 75
RAPCA comments that current lines of communication are from region to state to local agencies. Locals would like more direct communication with U.S. EPA. Monthly Ohio Local Air Pollution Control Officers Association (OLAPCOA) meetings are a good opportunity for increased communication. RAPCA welcomes any such opportunity to discuss program activities on a regular basis.

Response: This comment falls beyond the scope of the review. To the extent the comment raises matters relevant to the on-going relationship among U.S. EPA, Ohio EPA, and Ohio local agencies in managing environmental programs in Ohio, U.S. EPA will consider it in the appropriate forum.

Comment No. 76
RAPCA indicates that training is the primary responsibility of U.S. EPA, and local agencies need more training. RAPCA feels that Region 5 should survey the states and local agencies annually and work with them to coordinate appropriate training needs.

Response: In response to U.S. EPA's preliminary finding, Ohio EPA noted it has taken several actions to improve staff training, including conducting a survey in November 1999 to identify future training needs and establishing a training committee in the DAPC. More recently, Ohio EPA developed a draft description of a minimum training curriculum for new entry level employees working in permitting and enforcement areas in Ohio. Ohio EPA is soliciting comment on the draft from field offices and U.S. EPA. Ohio EPA committed to require field

offices to implement the curriculum. The U.S. EPA believes that training is a shared federal and state/local responsibility and will continue to look for ways to help the state/local agencies meet their training needs.

Comment No. 77
RAPCA would like to see commitment at all levels of government to promptly respond to public comments. This is one area local agencies are disappointed about with regards to Ohio EPA.

Response: This comment falls beyond the scope of the review. To the extent the comment raises matters relevant to the on-going relationship among U.S. EPA, Ohio EPA, and Ohio local agencies in managing environmental programs in Ohio, U.S. EPA will consider it in the appropriate forum.

Comment No. 78
With MACT hammer provisions approaching, we suggest Region V work with both Ohio EPA and local agencies on expectations.

Response: This comment falls beyond the scope of the review. To the extent the comment raises matters relevant to the on-going relationship among U.S. EPA, Ohio EPA, and Ohio local agencies in managing environmental programs in Ohio, U.S. EPA will consider it in the appropriate forum.

Comment No. *79*
U.S. EPA has stopped communication with local agencies. RAPCA recommends more communication because most Ohio air programs are carried out by nine local agencies.

Response: U.S. EPA will work to keep open communication with the local agencies and Ohio EPA. Local agencies are encouraged to attend the monthly permitting conference calls so as to facilitate communicate between U.S. EPA, Ohio EPA, and the local agencies.

Comment No. 80
The Ohio Attorney General's office provided redline-strikeout comments on the interview questions and responses to the Draft Report.

Response: This comment letter has been added to the administrative record.

IV. CLEAN WATER ACT-SPECIFIC COMMENTS AND RESPONSES

Comment No. 1
Even in its limited review, U.S. EPA found many major deficiencies in Ohio EPA's NPDES program sufficient to justify withdrawal of that authorization.

Response: Although it is true that deficiencies were identified in the review, the state has corrected these deficiencies, as described in the Final Report.

Comment No. 2
Ohio EPA has failed to develop an adequate regulatory program for developing water quality based effluent limits in NPDES permits as required, given its failure to develop TMDLs.

Response: The NPDES permitting requirements pertaining to development of water quality based effluent limits are set forth at 40 C.F.R. §122.44(d). Those provisions require permitting authorities to determine whether a discharge "causes, has the reasonable potential to cause, or contributes" to an excursion above water quality standards, using procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving stream. 40 C.F.R. §122.44(d)(1)(ii). This process is referred to, in shorthand, as determining "reasonable potential." 40 C.F.R. §122.44(d)(1)(vii) then requires that, when the permitting authority determines, using those procedures, that a discharge has "reasonable potential," the permitting authority must include water quality based effluent limitations in the permit to control the pollutant or pollutant parameter that ensure that:

> (1) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from and complies with all applicable water quality standards; and
>
> (2) Effluent limits . . . are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared [as part of a TMDL] by the State and approved by U.S. EPA pursuant to 40 C.F.R. §130.7.

NPDES permitting authorities, therefore, are required to utilize appropriate procedures to determine whether a discharge has "reasonable potential" and, if so, to include water quality based effluent limits that meet the requirements of 40 C.F.R. §122.44(d)(1)(vii)(A). In addition, those limits also must be "consistent with the assumptions and requirements of any available wasteload allocation" (emphasis added). 40 C.F.R. §122.44(d), therefore, does not require development of TMDLs; it only requires that, once a TMDL has been developed and approved by the State and approved by U.S. EPA pursuant to 40 C.F.R. §130.7, any water quality based

effluent limits must, in addition to meeting the requirements of 40 C.F.R. §122.44(d)(1)(1)(vii)(A), also be consistent with such TMDL.

None of the petitioners or commenters in these proceedings has alleged that Ohio EPA is not utilizing appropriate procedures for determining "reasonable potential." Nor has any petitioner or commenter alleged that, once Ohio EPA has determined that "reasonable potential" exists, Ohio EPA is not including effluent limitations that meet the requirements of 40 C.F.R. §122.44(d)(1)(vii)(A) (i.e., limitations that ensure that "[t]he level of water quality to be achieved by limits on point sources established under this paragraph is derived from and complies with all applicable water quality standards"). Finally, none of the petitioners or commenters has alleged that Ohio EPA is not including limitations in NPDES permits that are "consistent with the assumptions and requirements of any available wasteload allocation." Thus, there is nothing in the petition or in the comments that supports the allegation that Ohio EPA has not developed an adequate regulatory program for developing water quality based effluent limitations.

A premise underlying this comment is that it is somehow not possible to develop appropriate water quality based effluent limitations for point sources without a TMDL. That premise is simply untrue. As described above, U.S. EPA's NPDES permitting regulations require permitting authorities to determine reasonable potential and include effluent limitations on point sources whether or not a TMDL has been developed; and NPDES permitting authorities in Ohio and elsewhere have being doing so for years. U.S. EPA recognizes that, in many situations, non-point sources of pollutant loadings are largely responsible for nonattainment of water quality standards. In those situations, the NPDES permitting program, with its exclusive focus on regulating point sources, cannot by itself eliminate those water quality problems, and so other non-NPDES efforts must also be utilized to address those problems. The requirements pertaining to development of TMDLs under Section 303(d) of the Clean Water Act and 40 C.F.R. §130.7 are examples of non-NPDES requirements that, in conjunction with the NPDES program, may lead to attainment of water quality standards in waters that are impacted by non-point sources. However, alleged inadequacies in a State's efforts to comply with the TMDL requirements under Section 303(d) of the Clean Water Act and 40 C.F.R. §130.7 are simply not relevant in assessing the adequacy of a State's NPDES program.

Comment No. 3

Although most CAFO discharges identified have been known by Ohio EPA, it has failed to seek compliance or pursue enforcement. Ohio EPA is not regulating CAFOs when only 6 of 148 CAFOs have been notified that they must submit an NPDES application.

Response: As set forth in the Final Report and water background document, at the time of the Draft Report Ohio EPA had committed in the context of its CWA Section 106 grant to require documented CAFO dischargers to apply for NPDES permits, to develop and issue appropriate NPDES permits for CAFOs, and to take appropriate CWA enforcement actions in response to

ATTACHMENT F

CWA violations committed by CAFOs. Ohio EPA has since begun the process of conducting CAFO inspections, conducting enforcement and requiring NPDES permit applications for CAFOs. Ohio has also public noticed its first NPDES permit for a CAFO and is in the process of permit issuance. More specifically, for fiscal year 2003, Ohio EPA has committed to completing all animal feeding operation inspections with greater than 1000 animal units by October 1, 2003. The purpose of these inspections will be to determine whether the animal feeding operation is a concentrated animal feeding operation, i.e a CAFO as defined under the Clean Water Act. Ohio EPA has also committed to requiring those animal feeding operations which are CAFOs to apply for NPDES permits and to issue NPDES permits to those facilities. It is currently estimated that there are 144 facilities in the State with greater than 1000 animal units. As of the end of calendar year 2002, Ohio EPA had inspected 88 animal feeding operations. This leaves 57 animal feeding operations to be inspected in fiscal year 2003. As mentioned above, the Ohio EPA has committed to conducting inspections at these remaining facilities over 1000 animal units in order to determine if they are CAFOs and is committed to completing these inspections in their 106 program plan for fiscal year 2003.

Ohio EPA provided the following information in their Summary of Livestock Activities for federal fiscal year 2002: Ohio EPA currently has six complete NPDES permit applications in house and has issued one NPDES permit to a CAFO so far. Three more NPDES permits are under development. Ohio EPA has also issued a Directors Finding and Order to Buckeye Egg, requiring Buckeye Egg to apply for NPDES permits at all eleven of its facilities.

During fiscal year 2002, Ohio EPA issued enforcement orders to 4 facilities. Ohio EPA also filed three sets of contempt charges against the Buckeye Egg Farm and was involved in three hearings. In April 2002, the Director of Ohio EPA proposed to revoke all of Buckeye Egg Farm's Permit to Install (PTIs). The revocation process was in progress at the time of the PTI authority transfer to the Ohio Department of Agriculture (ODA), therefore ODA had to restart the process under its regulations.

Additionally, during fiscal year 2003, Region 5 will conduct the following activities to insure that the State of Ohio continues to implement the NPDES permit program for CAFOs:

1. Continue to monitor the State's progress in conducting CAFO inspections under the 106 grant program.

2. Work with the State in revising its CAFO regulations which are expected to be effective in March 2003.

3. Work with the State to update its CAFO enforcement strategy.

4. Region 5 will conduct a reevaluation of Ohio EPA's NPDES compliance and enforcement program and CAFO program in fiscal year 2003. This evaluation will be completed to insure that Ohio EPA has corrected deficiencies identified in the original report.

Comment No. 4

Although Ohio EPA may send a letter stating an NPDES permit is required when it determines that a "large CAFO" has a discharge, it has no adequate procedure in place to make such a determination and does not plan to have all CAFOs inspected until 2003.

Response: The basic process for determining whether a facility is a CAFO is to conduct an inspection. Inspecting all large animal feeding operations by the end of 2003 is consistent with the national strategy for CAFO's.

Comment No. 5

Ohio EPA has not pursued enforcement at "small AFOs" but works with them to correct problems. These discharges are to stop by 2002 or have an NPDES permit. Ohio EPA does not justify why this has been occurring.

Response: The national unified strategy in dealing with CAFO's provides the opportunity for medium sized CAFO's to be excluded from the regulatory process by eliminating discharges to the waters of the United States. Ohio's approach is consistent with this strategy. Ohio conducts followup on enforcement actions to see that they are complied with. Often when facilities are referred for prosecution violations can continue for some time. It often takes several years for violations to be resolved through the judicial system. Additionally, these are typically cases where less formal enforcement actions have failed to return the permittee to compliance with permit requirements.

Comment No. 6

Ohio EPA claims its computer program and system are the reason for slow discovery of violations (this is being "fixed"), but Ohio EPA has a Total Quality management (TOM) policy that may be the more likely reason. The TQM policy puts the polluter/customer's needs first.

Response: U.S. EPA has verified that Ohio EPA has corrected the computer problems that caused this deficiency, and Ohio EPA can currently surface violations in a timely manner. U.S. EPA did not investigate or reach any conclusions as to whether or not a TQM policy is a likely reason for "slow discovery of violations". However, U.S. EPA believes that Ohio now has the capability to expeditiously surface and respond appropriately to effluent violations. U.S. EPA will verify this fiscal year that this problem has been corrected.

Comment No. 7

Ohio EPA has been unable to respond to citizen requests for discharge information due to an inability to access its database.

Response: U.S. EPA has verified that Ohio EPA has corrected this problem. Citizens can now obtain discharge information from both the SWIMS and PCS system.

Comment No. 8

There has been a reduction in enforcement actions. Ohio EPA claims that there is no trend in enforcement actions. Ohio EPA provided a chart indicating that the number of enforcement actions has increased in the last 2 years. The chart does not indicate how long the violations have been occurring how long it took to issue an order or refer it to the AG's office, when or if the violation has ceased, and whether neighbors to the facility were satisfied with the remedy.

Response: The chart at issue did not form a basis for U.S. EPA's conclusion in the Final Report. The chart was taken to be illustrative of Ohio EPA's claim that its enforcement efforts have increased, not decreased, as stated in the Draft Report, and not as a comprehensive effort by Ohio EPA to describe information such as how long the violations have been occurring how long it took to issue an order or refer it to the AG's office, when or if the violation has ceased, and whether neighbors to the facility were satisfied with the remedy. U.S. EPA will conduct a review this fiscal year to insure that Ohio EPA is entering all violations of NPDES permits into the PCS data system.

Comment No. 9

Ohio EPA has three enforcement standards to increase enforcement: (1) ensuring that administrative enforcement actions are resolved within 2 years of initiation; (2) giving each division set number of enforcement orders at the beginning of the year, and (3) ensuring that all verified complaints are resolved within 2 years of receipt. Such deadlines may lead to resolutions that are not protective of the public.

Response: The commenter indicates that the three enforcement standards set forth in the comment are counterproductive to Clean Water Act enforcement efforts in Ohio. Such enforcement standards, though, could plausibly be intended to promote an aggressive and efficient enforcement program. This disagreement does not create a legitimate basis for withdrawal under the relevant withdrawal criteria.

Comment No. 10

Ohio EPA's enforcement performance standards ignore the agency's dangerous tendency of failing to identify significant violations and ignoring the full nature and extent of the violations.

Response: At the time of the issuance of the Draft Report the Surface Water Information Management System (SWIMS) was not yet fully operational and able to detect violations. Thus Ohio was unable to surface effluent violations in a timely manner (30 days after the report is due to the State as required under the Enforcement Management System). Ohio has resolved the outstanding issues with SWIMS. District and central office staff are now able to run real time reports and obtain compliance information.

Comment No. 11

Performance standards should be measured in terms of health and environmental protection not numerical quotas.

Response: The appropriate use of numerical quotas is an issue that environmental agencies, including U.S. EPA, have been wrestling with for a long time. However, U.S. EPA believes that it is acceptable to use numerical quotas as one tool in measuring the adequacy of enforcement efforts, issuing permits, conducting inspections, etc.

Comment No. 12

Ohio EPA claims it has changed its administrative enforcement process, but those changes do not address the agency's failure to uncover the full nature and extent of violations and their impact on surrounding communities. Additionally, Ohio EPA's vague reference to a "planning process" is so nonspecific that it gives no insight into what this process might entail.

Response: This comment is not related to the withdrawal criteria. Ohio EPA's administrative enforcement process is legally sufficient, and any allegation regarding the "agency's failure to uncover the full nature and extent of violations and their impact on surrounding communities" are not related to the adequacy of Ohio's administrative enforcement process.

Comment No. 13

An environmental program mandates both permitting and inspections, not a choice of one or the other. Ohio must commit necessary funds to carry out all program requirements if it wants to keep its federal authorization. Ohio EPA claims that U.S. EPA underestimated the number of inspections it performs, but not all Ohio EPA inspections are thorough enough to count as compliance inspections. Ohio EPA notes that U.S. EPA approved diverting funds from inspections to permit approval due to the backlog of NPDES permits. Diverting funds in this way only allows pollution to occur without oversight.

Response: As set forth earlier , Ohio EPA focused on a temporary basis, at U.S. EPA's request, on efforts to reduce the NPDES permit backlog. This resulted in many permittees receiving new permits with effluent limits that were more protective of human health and the environment than the old permits. U.S. EPA agrees that inspections are an important part of the enforcement and compliance program, but believes that it was a justifiable tradeoff to temporarily reduce the number of inspections in order to realize highly significant benefits in much stricter (often several orders of

magnitude more restrictive) permit effluent limits on bioaccumulative pollutants of concern. As of September 30, 2002, the overall permit backlog was at 17%. The current agency goal is to reduce the backlog of expired permits to no more than 10% by December 2004, so somewhat reduced inspection levels are anticipated for the near future. U.S. EPA found no evidence to support the statement that "not all Ohio EPA inspections are thorough enough to count as compliance inspections."

Comment No. 14

U.S. EPA fails to address (1) Ohio EPA's inadequate inspection program, (2) Ohio EPA's inability to uncover unpermitted sources or discharges, (3) lack of adequate staffing and other resources, and (4) Ohio EPA's failure to verify representations of regulated facilities. Ohio EPA has systematically failed to exercise control over activities, including sanitary sewer discharges, industrial discharges, CAFOs, and other direct discharges with no proper NPDES permit.

Response: This comment from petitioners fails to cite any specific allegations regarding Ohio's alleged failures. U.S. EPA designed a protocol based on the withdrawal criteria and the allegations set forth in the petition. The protocol set forth a method of analysis for review of Ohio's CWA program under the relevant withdrawal criteria. The U.S. EPA disagrees that the CWA review of Ohio's program failed to evaluate critical program requirements; rather, the CWA review followed the appropriate withdrawal criteria, examined the allegations of the petition, designed comprehensive protocols, and set forth reasonable conclusions.

Comment No. 15

U.S. EPA needs to more carefully analyze Ohio EPA's record for uncovering and enforcing illegal discharges into and from POTWs.

Response: U.S. EPA monitors Ohio EPA's quarterly noncompliance report, active exceptions list and citizens' complaints regularly. The enforcement scheme under the CWA relies heavily on self-monitoring, and thus relies on the integrity of permittees to provide accurate and complete information on their discharges. One function of compliance inspections is to check and insure that permittees are reporting accurate information in their self monitoring program. U.S. EPA in its program review did not focus on the pretreatment enforcement program. Typically, since most POTWs are authorized to operate the pretreatment program, most state actions addressing industrial users comes as a result of conducting pretreatment audits or pretreatment compliance inspections.

Comment No. 16

Ohio EPA has failed to conduct annual inspections at facilities that are known to be in violation of the CWA. Ohio ranks second in the U.S. in its failure to conduct CWA inspections of known violators. In 1998 and 1999, Ohio EPA failed to inspect 31 facilities in significant noncompliance. The "Pollution Pays" report provides many examples of Ohio EPA's failures, including that 14 of 22 major facilities in Ohio have violated the CWA at least once in the past 2 years and that fines for violations do not result in their cessation. U.S. EPA's evaluation does not consider whether Ohio

EPA has sufficient inspection and surveillance procedures and the ability to verify the accuracy of information submitted by a facility. Petitioners' petition, supporting documentation, and public testimony provide numerous examples of Ohio EPA's failure to take adequate enforcement actions.

Response: In designing a protocol to examine Ohio's enforcement efforts under the NPDES program, U.S. EPA examined the petitioner's claims in its petition, and applied the withdrawal criteria against a rigorous field examination of Ohio EPA records. By examining the various components of Ohio's NPDES program, as well as case files a comprehensive review was achieved. U.S. EPA examined Ohio's inspection and enforcement program and made specific recommendations and conclusions. Ohio, as a result of this review and as set forth in the Final Report, made commitments to make certain improvements in its NPDES program which address many of the concerns raised by the petitioner. U.S EPA additionally believes that the changes that Ohio EPA has made or committed to make in its programs as a result of this review will produce both direct and indirect benefits to the environment and to the public immediately and in the future. During the U.S. EPA review of the Ohio program U.S. EPA found no cases where federal enforcement needed to be initiated due to a failure by Ohio to take appropriate enforcement action.

Comment No. 17

Ohio EPA's distinction between "major" and "minor" violations ignores the many impacts of discharges as well as cumulative effects on a water body. It is also contrary to federal law.

Response: This comment is unclear. For example, is the commenter referring to major and minor dischargers, or to facilities in significant noncompliance? In any event, the terms "major" and "minor" dischargers generally refer to methods used nationally to prioritize enforcement responses, and is not contrary to federal law.

Comment No. 18

There are facilities listed in significant noncompliance in May 2000 despite paying fines in 1998 and 1999 for violations in 1993 and 1995. The violations continued but no additional fines were assessed.

Response: U.S. EPA's evaluation of Ohio's NPDES program looked at whether Ohio EPA was generally taking timely and appropriate enforcement actions for violations of permit requirements. During our file review U.S. EPA looked at compliance and enforcement files at over 85 major dischargers in three district offices. While we did find problems with the state surfacing violations, we did not identify any cases where federal enforcement was needed because the state failed to take appropriate enforcement.

Comment No. 19

In its evaluation of anti-degradation rules, U.S. EPA misses the interrelationship between issuing a permit to install a pollution source and a permit to discharge pollution from that source.

Response: The petitioners have requested that U.S. EPA withdraw Ohio EPA's NPDES permitting

program because Ohio EPA allegedly is not following its antidegradation rules in administering Ohio's permit to install program. The State's permit to install program is not a part of the its NPDES permitting program. Consequently, any alleged failure on the part of the State to comply with its own rules in administering its non-NPDES permit to install program does not constitute cause to commence withdrawal of Ohio NPDES permitting program. The petitioners and commenters have not pointed to any NPDES permitting decision where the State failed to comply with its anti-degradation policy.

Comment No. 20

U.S. EPA states that deficiencies in the anti-degradation rules would not result in the withdrawal of NPDES program authority, but failure to comply with those requirements might. U.S. EPA does not consider the adequacy of the anti-degradation rules. U.S. EPA needs to clarify these apparently contradictory statements.

Response: The State of Ohio has adopted an anti-degradation policy as part of its water quality standards and the adequacy of that policy is one to be addressed in accordance with the procedures for addressing the State's water quality standards set forth in Section 303(c) of the Clean Water Act. Specifically, upon adoption of that policy, the State was required to submit it to U.S. EPA for approval/disapproval, which the State did in the 1990s. Because the State submitted that policy to U.S. EPA prior to May 30, 2000, that policy is a part of the State's currently effective water quality standards (*See* 40 C.F.R. §131.21), and so long as Ohio EPA issues NPDES permits in a manner consistent with that policy, there is not cause to commence proceedings to withdraw Ohio's NPDES permit program.

Any alleged inadequacies in the State's anti-degradation policy must be addressed in accordance with the provisions governing water quality standards in Section 303(c) of the Clean Water Act and 40 C.F.R. Part 131, not the provisions governing NPDES permits in Section 402 of the Clean Water Act. Specifically, questions regarding the adequacy of Ohio's water quality standards—and particularly in regard to Ohio's anti-degradation policy—should, in the first instance, be raised to Ohio in the course of Ohio's review of its water quality standards in accordance with Section 303(c)(1). In this regard, it is worth noting that Ohio EPA convened an advisory committee to assist in developing revisions to its anti-degradation policy; that a number of the petitioners and commenters in these proceedings were represented on that advisory committee; that Ohio EPA recently proposed extensive revisions to its anti-degradation policy; and that Ohio EPA intends to adopt that revised policy in the very near future. Once those revisions are finalized, Ohio EPA will be required to submit that revised policy to U.S. EPA for approval/disapproval in accordance with Section 303(c)(2)(A), and U.S. EPA's decision to approve or disapprove that revised policy can be challenged in federal court to the extent that revised policy contains the inadequacies that the petitioners allege exist in Ohio's current anti-degradation policy.

In addition to participating in Ohio's efforts to revise its anti-degradation policy and potentially

challenging any decision U.S. EPA makes to approve or disapprove that revised policy, the public has an additional mechanism for remedying any alleged deficiencies in the State's anti-degradation policy. Specifically, the public may petition U.S. EPA to exercise its discretionary authority under Section 303(c)(4)(B) to "determine that a revised or new standard is necessary to meet the requirements of [the Clean Water Act]," and if U.S. EPA denies that petition or unreasonably delays in acting on it, the petitioner may seek judicial relief under the Administrative Procedures Act. *See* National Wildlife Federation v. Browner, 1996 WL 601451 *5 (D.D.C. 1996). However, that is something far different than a petition to withdraw Ohio's NPDES permitting program. Moreover, to the extent that the petition to withdraw Ohio's program could be construed as a petition requesting that U.S. EPA establish a new or revised anti-degradation policy for Ohio—which it is not—U.S. EPA believes that it would not be appropriate at this time for U.S. EPA to exercise its discretionary authority to take action. Instead, given the fact that the State has spent considerable time, effort and resources working with the public on development of a new anti-degradation policy and is very close to finalizing a revised anti-degradation policy that will have to be reviewed and approved or disapproved by U.S. EPA, and that U.S. EPA's action to approve or disapprove that revised policy will be subject to judicial review, U.S. EPA believes that the appropriate course of action at this time is to allow that process to play itself out before U.S. EPA exercises its discretionary authority under Section 303(c)(4)(B).

Comment No. 21

The time to perform an anti-degradation review is when the facility is being constructed, not when the NPDES permit is issued, regardless of the source, even though the requirement to perform such a review is part of the NPDES program.

Response: The petitioners have requested that U.S. EPA withdraw Ohio EPA's NPDES permitting program because Ohio EPA allegedly is not following its anti-degradation rules in administering Ohio's permit to install program. The State's permit to install program is not a part of the its NPDES permitting program. Consequently, any alleged failure on the part of the State to comply with its own rules in administering its non-NPDES permit to install program does not constitute cause to commence withdrawal of Ohio NPDES permitting program. The petitioners and commenters have not pointed to any NPDES permitting decision where the State failed to comply with its anti-degradation policy.

Comment No. 22

U.S. EPA states that TMDL requirements are not part of Ohio EPA's NPDES program and therefore cannot lead to withdrawal of NPDES program authority. This ignores the fact that all NPDES permits must contain limits consistent with TMDLs. The interrelationship between these two provisions should affect Ohio EPA's authority under the NPDES program.

Response: The NPDES permitting requirements pertaining to development of water quality based

effluent limits are set forth at 40 C.F.R. §122.44(d). Those provisions require permitting authorities to determine whether a discharge "causes, has the reasonable potential to cause, or contributes" to an excursion above water quality standards, using procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving stream. 40 C.F.R. §122.44(d)(1)(ii). This process is referred to, in shorthand, as determining "reasonable potential." 40 C.F.R. §122.44(d)(1)(vii) then requires that, when the permitting authority determines, using those procedures, that a discharge has "reasonable potential," the permitting authority must include water quality based effluent limitations in the permit to control the pollutant or pollutant parameter that ensure that

1. The level of water quality to be achieved by limits on point sources established under this paragraph is derived from and complies with all applicable water quality standards; and

2. Effluent limits . . . are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared [as part of a TMDL] by the State and approved by EPA pursuant to 40 C.F.R. §130.7.

NPDES permitting authorities, therefore, are required to utilize appropriate procedures to determine whether a discharge has "reasonable potential" and, if so, to include water quality based effluent limits that meet the requirements of 40 C.F.R. §122.44(d)(1)(vii)(A). In addition, those limits also must be "consistent with the assumptions and requirements of <u>any available</u> wasteload allocation" (emphasis added). 40 C.F.R. §122.44(d), therefore, does not require development of TMDLs; it only requires that, once a TMDL has been developed and approved by the State and approved by U.S. EPA pursuant to 40 C.F.R. §130.7, any water quality based effluent limits must, in addition to meeting the requirements of 40 C.F.R. §122.44(d)(1)(vii)(A), also be consistent with such TMDL.

None of the petitioners or commenters in these proceedings has alleged that Ohio EPA is not utilizing appropriate procedures for determining "reasonable potential." Nor has any petitioner or commenter alleged that, once Ohio EPA has determined that "reasonable potential" exists, Ohio EPA is not including effluent limitations that meet the requirements of 40 C.F.R. §122.44(d)(1)(vii)(A) (i.e., limitations that ensure that "[t]he level of water quality to be achieved by limits on point sources established under this paragraph is derived from and complies with all applicable water quality standards"). Finally, none of the petitioners or commenters has alleged that Ohio EPA is not including limitations in NPDES permits that are "consistent with the assumptions and requirements of any available wasteload allocation." Thus, there is nothing in the petition or in the comments that supports the allegation that Ohio EPA has not developed an adequate regulatory program for developing water quality based effluent limitations.

A premise underlying this comment is that it is somehow not possible to develop appropriate water

quality based effluent limitations for point sources without a TMDL. That premise is simply untrue. As described above, U.S. EPA's NPDES permitting regulations require permitting authorities to determine reasonable potential and include effluent limitations on point sources whether or not a TMDL has been developed; and NPDES permitting authorities in Ohio and elsewhere have being doing so for years. U.S. EPA recognizes that, in many situations, non-point sources of pollutant loadings are largely responsible for nonattainment of water quality standards. In those situations, the NPDES permitting program, with its exclusive focus on regulating point sources, cannot by itself eliminate those water quality problems, and so other non-NPDES efforts must also be utilized to address those problems. The requirements pertaining to development of TMDLs under Section 303(d) of the Clean Water Act and 40 C.F.R. §130.7 are examples of non-NPDES requirements that, in conjunction with the NPDES program, may lead to attainment of water quality standards in waters that are impacted by non-point sources. However, alleged inadequacies in a State's efforts to comply with the TMDL requirements under Section 303(d) of the Clean Water Act and 40 C.F.R. §130.7
are simply not relevant in assessing the adequacy of a State's NPDES program.

Comment No. 23
U.S. EPA does not explain the proper recourse for it and the public when Ohio EPA fails to implement two critical components of the CWA (anti-degradation and TMDLs).

Response: Any alleged inadequacies in the State's anti-degradation policy must be addressed in accordance with the provisions governing water quality standards in Section 303(c) of the Clean Water Act and 40 C.F.R. Part 131, not the provisions governing NPDES permits in Section 402 of the Clean Water Act. Specifically, questions regarding the adequacy of Ohio's water quality standards—and particularly in regard to Ohio's anti-degradation policy—should, in the first instance, be raised to Ohio in the course of Ohio's review of its water quality standards in accordance with Section 303(c)(1). In this regard, it is worth noting that Ohio EPA convened an advisory committee to assist in developing revisions to its anti-degradation policy; that a number of the petitioners and commenters in these proceedings were represented on that advisory committee; that Ohio EPA recently proposed extensive revisions to its anti-degradation policy; and that Ohio EPA intends to adopt its revised policy in the very near future. Once those revisions are finalized, Ohio EPA will be required to submit that revised policy to U.S. EPA for approval/disapproval in accordance with Section 303(c)(2)(A), and U.S. EPA's decision to approve or disapprove that revised policy can be challenged in federal court to the extent that revised policy contains the inadequacies that the petitioners allege exist in Ohio's current anti-degradation policy.

In addition to participating in Ohio's efforts to revise its anti-degradation policy and potentially challenging any decision U.S. EPA makes to approve or disapprove that revised policy, the public has an additional mechanism for remedying any alleged deficiencies in the State's anti-degradation policy. Specifically, the public may petition U.S. EPA to exercise its discretionary authority under Section 303(c)(4)(B) to "determine that a revised or new standard is necessary to meet the

requirements of [the Clean Water Act]," and if U.S. EPA denies that petition or unreasonably delays in acting on it, the petitioner may seek judicial relief under the Administrative Procedures Act. *See* National Wildlife Federation v. Browner, 1996 WL 601451 *5 (D.D.C. 1996). However, that is something far different than a petition to withdraw Ohio's NPDES permitting program. Moreover, to the extent that the petition to withdraw Ohio's program could be construed as a petition requesting that U.S. EPA establish a new or revised anti-degradation policy for Ohio—which it is not--U.S. EPA believes that it would not be appropriate at this time for U.S. EPA to exercise its discretionary authority to take action. Instead, given the fact that the State has spent considerable time, effort and resources working with the public on development of a new anti-degradation policy and is very close to finalizing a revised anti-degradation policy that will have to be reviewed and approved or disapproved by U.S. EPA, and that U.S. EPA's action to approve or disapprove that revised policy will be subject to judicial review, U.S. EPA believes that the appropriate course of action at this time is to allow that process to play itself out before U.S. EPA exercises its discretionary authority under Section 303(c)(4)(B).

With regard to alleged inadequacies in Ohio's compliance with the TMDL requirements in Section 303(d) of the Clean Water Act and 40 C.F.R. §130.7, members of the public have sought recourse in the federal courts. Indeed, one such lawsuit pertaining to the adequacy of Ohio's efforts to comply with TMDL requirements is currently pending in the United States District Court for the Southern District of Ohio, National Wildlife Federation v. EPA, C2-01-1052 (S.D. Ohio).

Comment No. 24

U.S. EPA begs the question of whether there are failures in Ohio EPA's 401 certification program, stating it is not part of the NPDES program.

Response: U.S. EPA plays a very limited role under Section 401 of the Clean Water Act. Specifically, unlike U.S. EPA's oversight role under Section 402 of the Clean Water Act pertaining to NPDES permitting, or U.S. EPA's approval/disapproval role under Section 303(c) of the Clean Water Act pertaining to water quality standards, nothing under Section 401 gives U.S. EPA authority to review a State's implementation of the State's authority under Section 401 except that, in those instances where a State "has no authority to give [a Section 401] certification," U.S. EPA serves as the certification authority. There is no allegation here that Ohio EPA has no authority to give Section 401 certifications. Consequently, U.S. EPA respectfully declines the commenter's request to address "the question of whether there are failures in Ohio EPA's 401 certification program."

Comment No. 25

Ohio EPA's NPDES program failures are evident in the conditions of the state's water bodies, where at least 40 percent of rivers and streams are not fishable or swimmable and all water bodies have a fish consumption advisory (mercury) in effect.

Response: There is nothing in the record before U.S. EPA that suggests that the fact that some of Ohio's waters are not fishable or swimmable is attributable at all to "failures" in Ohio's NPDES program. A more likely explanation for nonattainment of the fishable swimmable goals of the Clean Water Act is nonpoint source pollutation and air deposition (especially with regard to mercury), neither of which is regulated under the NPDES program.

Comment No. 26

Ohio EPA's poor investigation and enforcement record is reflected in the poor conditions of Ohio's rivers and streams. Ohio EPA still grants 600 to 700 permits per year that state that discharges will result in degradation of water quality in the receiving water but will not exceed chemical-specific water quality criteria. U.S. EPA should evaluate this practice.

Response: The Clean Water Act anti-degradation requirements do not prohibit lowering of water quality. Instead, they allow lowering of water quality under certain conditions. The petitioners and commenters have not cited to any NPDES permitting decision by Ohio EPA that was not in accordance with the State's anti-degradation policy.

Comment No. 27

Degradation of water quality in Ohio is due to the failure of Ohio EPA's CWA program and federal authority must be withdrawn.

Response: The CWA program at issue here is Ohio's NPDES program and there is nothing in the record before U.S. EPA that suggests that "degradation of water quality in Ohio is due to the failure of Ohio EPA's NPDES program.

Comment No. 28

Is there any expectation on the part of U.S. EPA that a developer submit a storm water pollution prevention plan before a permit is granted?

Response: Yes, U.S. EPA's storm water permitting regulations pertaining to construction activity at 40 C.F.R. §122.26(c)(1)(ii) require that developers include the following with their permit application or notice of intent for coverage under a general permit:

(C) Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements; [and]

(D) Proposed measures to control pollutants in storm water discharges that occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements.

Ohio EPA's currently effective general permit, which expired in 1997, and its proposed reissued general permit, both require submission of such "storm water pollution prevention plans" with their notice of intent to be covered and require implementation of those plans. Indeed, the language in Ohio's general permit is similar to the language in U.S. EPA's general permit authorizing storm water discharges from construction sites. See 63 Fed. Reg. 7858, 7906 (Feb. 17, 1998). Ohio's current and proposed permits, therefore, are consistent with the Clean Water Act and U.S. EPA's implementing regulations.

Comment No. 29

Ohio EPA is issuing too many 401 certifications in response to Army Corps of Engineers 404 permits.

Response: U.S. EPA plays a very limited role under Section 401 of the Clean Water Act. Specifically, unlike U.S. EPA's oversight role under Section 402 of the Clean Water Act pertaining to NPDES permitting, or U.S. EPA's approval/disapproval role under Section 303(c) of the Clean Water Act pertaining to water quality standards, nothing under Section 401 gives U.S. EPA authority to review a State's implementation of the State's authority under Section 401 except that, in those instances where a State "has no authority to give [a Section 401] certification," U.S. EPA serves as the certification authority. There is no allegation here that Ohio EPA has no authority to give Section 401 certifications.

Comment No. 30

A commenter states that the Draft Report stated that there are no grounds for withdrawal of water program, as long as Ohio EPA takes a series of actions. What happens if Ohio EPA does not follow through? Has Ohio EPA ever gone back on its word before?

Response: Ohio must follow through on the commitments it has made, and has so far done so. For instance, Ohio can now surface effluent limitation violations in a timely manner. If Ohio does not follow through on the commitments set forth in the Final Report, then U.S. EPA reserves the right to reexamine whether or not to initiate withdrawal proceedings.

Comment No. 31

A commenter states that 44 percent of streams in Ohio do not meet Clean Water Act standards and that hydro modification is impairing streams. Why is Ohio EPA's 401 permit process tied to ACOE 404 process when we can relocate streams in Ohio without a permit review?

Response: U.S. EPA plays a very limited role under Section 401 of the Clean Water Act. Specifically, unlike U.S. EPA's oversight role under Section 402 of the Clean Water Act pertaining to NPDES permitting, or U.S. EPA's approval/disapproval role under Section 303(c) of the Clean Water Act pertaining to water quality standards, nothing under Section 401 gives U.S. EPA authority to review a State's implementation of the State's authority under Section 401 except that, in those

instances where a State "has no authority to give [a Section 401] certification," U.S. EPA serves as the certification authority. There is no allegation here that Ohio EPA has no authority to give Section 401 certifications.

Comment No. 32

A commenter states that Ohio EPA is granting NPDES permits but not requiring storm water pollution prevention plans. An Ohio EPA inspector, Harry Kallipolitis, is a good inspector, but the system is critically flawed. What validity is there to NPDES permits when as long as you pay for one you get it? You don't even have to submit a storm water pollution prevention plan, and we only have one inspector for 11 counties. It is a very reactive process, relying on chance inspections.

Response: U.S. EPA's storm water permitting regulations pertaining to construction activity at 40 C.F.R. §122.26(c)(1)(ii) require that developers include the following with their permit application or notice of intent for coverage under a general permit:

(C) Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, inxcluding a brief description of applicable State and local erosion and sediment control requirements; [and]

(D) Proposed measures to control pollutants in storm water discharges that occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements.

Ohio EPA's currently effective general permit, which expired in 1997, and its proposed reissued general permit, both require submission of such "storm water pollution prevention plans" with their notice of intent to be covered and require implementation of those plans. Indeed, the language in Ohio's general permit is similar to the language in U.S. EPA's general permit authorizing storm water discharges from construction sites. See 63 Fed. Reg. 7858, 7906 (Feb. 17, 1998). Ohio's current and proposed permits, therefore, are consistent with the Clean Water Act and U.S. EPA's implementing regulations. Ohio EPA requires construction sites to maintain the storm water pollution control plans on site, under the state's general permit. These are checked during inspections, not submitted to the Ohio EPA for review and approval. In Fiscal Year 2002 Ohio EPA conducted 1,984 storm water inspections at construction sites, making it one of the most active states in the Region for this aspect of the NPDES program.

Comment No. 33

A commenter expresses concerns regarding wetland depletion by development in central Ohio.

Response: Ohio EPA does not currently have an approved Section 404 permitting program pertaining to wetlands and so concerns regarding wetland depletion are outside the scope of this review.

Comment No. 34

A commenter inquires whether it is common practice to inform applicants that they may request exclusions or waivers to regulations?

Response: U.S. EPA is not certain whether "it is common practice to inform applicants that they may request exclusions or waivers to regulations", but there is nothing inappropriate about a state agency informing members of the regulated community regarding their legal rights to request exclusions or waivers to regulations.

Comment No. 35

U.S. EPA says neighbors should help to report suspected water violations, but for CAFOs, many neighbors are friends and family who do not "rat" on each other.

Response: Although this may be one barrier to community involvement in reporting environmental violations, U.S. EPA believes that it is often overcome by the public's understanding of the importance of enforcing environmental laws and regulations. At any rate, this comment cannot form a basis for withdrawing the NPDES program from Ohio under the relevant withdrawal criteria.

Comment No. 36

Ohio EPA protects industry over citizens because of politics. Elected officials depend on industry contributors. Short-term financial gain outweighs the future. In Enon, the new well field will be in close proximity to pollution sources. Testing and sampling methods are questionable. Free Ohio EPA of political appointees!

Response: This comment raises issues that are outside the scope of this review and not related to the withdrawal criteria.

Comment No. 37

Cincinnati/Hamilton County MSD has over 100 unregulated SSOs that Ohio EPA has allowed to continue despite a 1992 order requiring the MSD to "eliminate unpermitted discharges from overflows in separate sanitary sewers." Once commenter, who sells equipment for outdoor water sports, claims that many of his customers have become ill because in Southwest Ohio sewers are combined industrial/residential and during heavy rains untreated water flows into streams, putting public health at risk.

Response: Ohio EPA and U.S. EPA have worked together as co-plaintiffs in a judicial enforcement action against Cincinnati/Hamilton County. A motion seeking entry of an Interim, Partial Consent Decree addressing the SSO problems was filed in the United States District Court for the Southern District of Ohio, Western Division, in United States and the State of Ohio v. Hamilton County and City of Cincinnati, Ohio, Nos. C-1-02-107, C-1-02-108 and C-1-02-135. A copy of the Interim, Partial Consent Decree and the motion for entry have been included in the administrative record for the Ohio review. For the reasons described in those documents, U.S. EPA believes that Ohio's

enforcement response to these violations was timely and appropriate.

Comment No. 38
Cincinnati Specialties has exceeded its discharge limits in discharges to the POTW without Ohio EPA action.

Response: Cincinnati Specialties (CS) is located in Cincinnati and it is first and foremost the responsibility of the Metropolitan Sewer District of Greater Cincinnati (MSDGC) to deal with any Industrial User issues as the approved pretreatment control authority. If a non-compliant facility discharges cause pass through or interference at the POTW, and the POTW failed to take appropriate action, Ohio EPA, or U.S. EPA, would have the responsibility to act to address such discharges. MSDGC has been taking regular enforcement actions against CS for violations of its Industrial User Permit and has fined CS accordingly. There have been no discharges from MSDGC's Mill Creek Wastewater Treat Plant in violation of the NPDES Permit which were caused by the pass through of CS wastes or the interference of the CS wastes with the wastewater treatment process at the Mill Creek Plant.

Comment No. 39
Nylonge Corp.'s discharges to the POTW damaged the system's integrity, but Ohio EPA failed to take action against Nylonge or the POTW.

Response: The City of Elyria took action as the approved pretreatment control authority to address such issues. Nylonge payed fines and also shared in the cost of sewer repairs.

Comment No. 40
Morton International violated its POTW discharge 96 times between 1993 and 1999. Ohio EPA failed to take action despite the fact that Morton is under a consent order for prior violations.

Response: There are at least 10 Morton International and Rohm & Haas (Morton has been a wholly owned subsidiary of Rohm & Haas since 1999) facilities throughout Ohio, so without a specific location we can only answer generally. As in the case of Cincinnati Specialties, it is the responsibility of the approved pretreatment authority to deal with any Industrial User issues as they arise. If the non-compliant facility discharges cause pass through or interference at the POTW, or the control authority fails to act, it would be the responsibility of Ohio EPA, or U.S. EPA, to act to address such discharges.

Comment No. 41
A commenter states that discharges from Danis Tremont Landfill resulted in a change in water quality designation of Chapman's Creek.

Response: The commenter has not explained how this allegation, even if true, warrants

commencement of withdrawal proceedings.

Comment No. 42

A commenter states that Ormet Corp.'s facilities have one or two NPDES violations per quarter yet have not been fined by Ohio EPA.

Response: The Ormet facilities were the subject of Federal administrative orders in 1997 and administrative penalty orders in 1998 with penalties totaling nearly $200,000. It was a mutual decision between Ohio EPA and U.S. EPA that U.S. EPA take the lead on these actions and is not reflective in any way of a failure to pursue enforcement by Ohio EPA.

Comment No. 43

Eramet discharges 30 to 35 million gallons of wastewater into the Ohio River everyday but has received no fines in the past several years for any violations. The Ohio EPA inspector acknowledged that he did not always have time to write NOVs and that "major violations" were only those resulting in fish kills.

Response: The Eramet facility was the subject of a Federal Multi-media inspection in 1999 and has been undergoing the scrutiny of U.S. EPA, Fish and Wildlife Service, and the state of West Virginia in addition to the Ohio EPA.

Comment No. 44

The Sierra Club has strong concerns about the proposal to double Pickerington's wastewater treatment capacity. The Central Ohio Sierra Club group questions Ohio EPA's review of NPDES permit modification for the City of Pickerington and complains that not enough notice was given to public regarding the public hearing.

Response: The sole basis cited by this commenter and others for their concerns regarding the substance of Ohio EPA's proposed permit modification for the City of Pickerington is their belief that Ohio EPA incorrectly applied the state's anti-degradation policy deminimis exceptions in developing the proposed permit. U.S. EPA has reviewed the fact sheet and other documents in the Ohio permit files regarding this facility and believes that Ohio EPA correctly applied the states's anti-degradation deminimis provisions.

With regard to the commenter's concerns regarding the adequacy of the public notice given by Ohio EPA regarding the public hearing, U.S. EPA believes that any concerns that may have existed on this issue were adequately addressed by Ohio EPA when it recently re-public noticed the proposed permit and held a second public hearing on the proposed permit.

Comment No. 45

A commenter states that the problems ongoing with the Buckeye Egg Farm have been continuing since 1982 but that Ohio EPA permitted more laying buildings and burying of dead chickens and building materials. Buckeye Egg was allowed to install inadequate floodgate on a problematic lagoon and they have polluted the creek several times.

Response: U.S. EPA believes that Ohio EPA has now pursued compliance and enforcement issues at Buckeye Egg and reached settlement or pursued court cases on all water issues.

Comment No. 46

A commenter states that sewer overflow problems going back to 1989 were identified by Ohio EPA staff and that these problems were caused by a lack of capacity at treatment plants in Cincinnati. A 1992 consent decree had no enforcement schedule. The system is still inadequate and harms the public health and raises insurance rates.

Response: Ohio EPA and U.S. EPA have worked together as co-plaintiffs in a judicial enforcement action against Cincinnati/Hamilton County. At the end of August, 2002, a motion seeking entry of an Interim, Partial Consent Decree addressing the SSO problems was filed in the United States District Court for the Southern District of Ohio, Western Division, in United States and the State of Ohio v. Hamilton County and City of Cincinnati, Ohio, Nos. C-1-02-107, C-1-02-108 and C-1-02-135. A copy of the Interim, Partial Consent Decree and the motion for entry have been included in the administrative record for the Ohio review. For the reasons described in those documents, U.S. EPA believes that Ohio's enforcement response to these violations was timely and appropriate.

Comment No. 47

A commenter states that since 1989, he has tracked numerous violations at Park Farms, but Ohio EPA hears only from lobbyists, and that he has been dismissed for many humorous reasons, including not being able to identify the site because it keeps changing its name. Ohio EPA needs to remember that people are important, not money.

Response: Ohio EPA now has resources specifically dedicated to the CAFO issue and will ultimately be delegating the federal NPDES program with respect to CAFOs only to the Ohio Department of Agriculture. We recommend that citizen complaints regarding CAFOs be referred to Cathy Alexander at Ohio EPA.

Comment No. 48

The City of Olmstead Falls feels that the recent review and processing by Ohio EPA of the application submitted by Cleveland's DPC and subsequent waiver by the Ohio EPA Director should have been included in the U.S. EPA Draft Report, considering concerns by U.S. EPA, Ohio EPA and the Army Corps of Engineers (ACOE) were not satisfied as specified under the Clean Water Act.

Response: Since the concerns and allegations relating to this issue were not raised in the petition

but instead were raised for the first time during the public comment period, U.S. EPA did not consider these comments in the process of preparing the Draft Report findings. Moreover, Ohio EPA's actions here — waiving its right to issue or deny a section 401 certification for this specific instance — is not an NPDES issue. As described above, U.S. EPA plays a very limited role under Section 401 of the Clean Water Act. Specifically, unlike U.S. EPA's oversight role under Section 402 of the Clean Water Act pertaining to NPDES permitting or U.S. EPA's approval/disapproval role under Section 303(c) of the Clean Water Act pertaining to water quality standards, nothing under Section 401 gives U.S. EPA authority to review a state's implementation of the state's authority under Section 401 except that, in those instances where a state "has no authority to give (a Section 401) certification, U.S. EPA serves as the certification authority. There is no allegation here that Ohio EPA has no authority to give Section 401 certifications.

Comment No. 49

A number of commenters raises concerns and allegations about specific facilities not mentioned in the petition and argue that the Draft Report should have reached a different conclusion.

Response: The concerns and allegations relating to such facilities were not reviewed in the process of preparing the Draft Report findings and were not cited by the petitioners in the January 27, 2000 amended petition. U.S. EPA did not review these facilities in preparation for the Draft Report, and cannot base final conclusions and determinations on them. U.S. EPA did, however, conduct a broad review of Ohio EPA's compliance actions at a broad range of facilities throughout Ohio to determine if there was an overall failure to act on violations, seek and collect adequate penalties, and inspect and monitor regulated facilities. Although petitioners raised a number of specific issues regarding the adequacy and timeliness of actions taken at certain facilities, U.S. EPA did not find an overall failure by Ohio EPA's enforcement program to act on violations, seek and collect adequate penalties, and inspect and monitor regulated facilities.

Comment No. 50

Several commenters raise issues regarding groundwater, including groundwater pollution from Geauga Industries, AC Humko, Timken, groundwater contamination in Middlefield, and groundwater issues at Buckeye Egg.

Response: Groundwater pollution, although a very important environmental issue, is not regulated under the NPDES program of the CWA because groundwater is not included under the definition of waters of the Unites States under the CWA. Groundwater pollution is thus outside the scope of this review.

Comment No. 51

Several commenters voice concerns related to plant expansions, including concern regarding the city of Pickerington's plans to expand their wastewater treatment plants.

Response: The sole basis cited by this commenter and others for their concerns regarding the substance of Ohio EPA's proposed permit modification for the city of Pickerington is their belief

that Ohio EPA incorrectly applied the state's anti-degradation policy de minimis exceptions in developing the proposed permit. U.S. EPA has reviewed the fact sheet and other documents in the Ohio permit files regarding this facility and believes that Ohio EPA correctly applied the states's anti-degradation deminimis provisions.

With regard to the commenter's concerns regarding the adequacy of the public notice given by Ohio EPA regarding the public hearing, U.S. EPA believes that any concerns that may have existed on this issue were adequately addressed by Ohio EPA when it recently re-public noticed the proposed permit and held a second public hearing on the proposed permit.

V. RCRA-SPECIFIC COMMENTS AND RESPONSES

Comment No. 1

With respect to the RCRA hazardous waste program, the petitioners point to statements made with respect to a number of facilities, and argue that the Draft Report should have reached a different conclusion.

Response: U.S. EPA reviewed compliance assurance actions taken by Ohio EPA at a broad range of regulated hazardous waste sites throughout Ohio to determine if there was an overall failure to act on violations, seek and collect adequate penalties, inspect and monitor, or comply with the Memorandum Of Agreement (MOA) as set forth in 40 C.F.R. §271.8. Although petitioners raised a number of specific issues regarding the adequacy and timeliness of actions taken at certain sites, U.S. EPA did not find an overall failure by Ohio EPA's enforcement program to act on violations, seek and collect adequate penalties, inspect and monitor, or comply with the MOA as set forth in 40 C.F.R. §271.8.

Comment No. 2

The petitioners point to the Vernay Labs Dayton Street facility and say that Ohio EPA knew that this facility was receiving hazardous waste from other facilities but did not regulate it as a TSD.

Response: The concerns and allegations relating to the Vernay Labs facility were not raised in the petition so this facility was not specifically reviewed in the process of preparing the preliminary findings in the Draft Report. U.S. EPA considers new allegations regarding specific facilities outside the scope of the initial petition, and will not make final conclusions and determinations based on them. U.S. EPA did look at Ohio EPA's program as a whole, including inspection and monitoring, permitting, and control over regulated activities, and did not find grounds to initiate withdrawal proceedings.

While this facility was not evaluated as part of the petition process, U.S. EPA has been responsive to petitioner's concern relating to this facility. U.S. EPA entered into an agreed order with Vernay Labs to perform RCRA corrective action on September 30, 2002.

Comment No. 3

Petitioners argue that Ohio EPA refuses to monitor communities for releases of hazardous wastes reaching off site.

Response: The U.S. EPA reviews the State's Corrective Action Program implementation on a regular basis to ensure that it meets the applicable federal requirements. While the RCRA permitting requirements at 40 C.F.R. §264.101(e)(2) include corrective action requirements beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator demonstrates that the owner or operator was unable to obtain access despite best efforts, the monitoring to determine the need for corrective action begins within the facility boundary. (See

generally 40 C.F.R. §§264.100(b) and 264.95.) The RCRA Subtitle C requirements do not require a State to monitor communities. Releases of reportable quantities from facilities that generate hazardous waste are tracked by the State's Division of Emergency and Remedial Response. That Division conducts prevention, identification, investigation, regulation and remediation of chemical and petroleum hazards in all environmental media.

Comment No. 4

Petitioners complain the Ohio EPA relies upon total quality management (TQM) policies and treats the regulated community as customers.

Response: An evaluation of a petition to withdraw programs is governed by the withdrawal criteria. As long as a state exercises control over regulated activities, issues permits consistent with requirements, has an adequate permit program, complies with public participation requirements, has adequate enforcement authority, conducts inspections, monitors activities, acts on violations, seeks adequate enforcement penalties, collects imposed fines and complies with program requirements and the terms of the MOA, espousal of theories will not form a basis for withdrawal.

Comment No. 5

Petitioners argue that Ohio EPA regularly fails to ensure continued compliance at facilities where "some" enforcement action is taken and cite the following facilities as examples: Hilton Davis, Columbus Steel Drum, Vernay Laboratories, Inc. and PPG Industries.

Response: As discussed above, U.S. EPA reviewed compliance assurance actions taken by Ohio EPA at a broad range of regulated hazardous waste sites throughout Ohio to determine if there was an overall failure to act on violations, seek and collect adequate penalties, inspect and monitor, or comply with the MOA. U.S. EPA's review of the Ohio EPA RCRA program indicated that Ohio EPA monitors compliance of regulated facilities. One of the mechanisms used by Ohio EPA's enforcement program to ensure compliance is conducting inspections. Ohio EPA is required to inspect hazardous waste treatment, storage, and disposal facilities once every two years, and has agreed to inspect at least 20% of the large quantity hazardous waste generators every year, so that all will be inspected within a 5-year period. Ohio EPA monitors facility commitments through inspections, reviews of facility submittals, and tracking of violations.

It is unclear whether the examples cited in the comment referred to clean ups under Ohio EPA's RCRA program. With respect to RCRA, Ohio EPA has approved cleanup plans for PPG Industries Inc. facilities in Barberton and Circleville, post-closure plans for the Noveon Hilton Davis, Inc. facility in Cincinnati, and an RFI workplan for the Columbus Steel Drum facility in Blacklick Ohio. Vernay Laboratories does not appear to be an example of following up on enforcement and was not mentioned in the petition. As discussed above, U.S. EPA entered into an agreed order with Vernay Labs to perform RCRA corrective action.

Comment No. 6

Petitioners say that Ohio EPA has repeatedly allowed a decade of delays to prevent timely corrective actions at sites with known hazardous waste releases.

Response: The petition did not raise this as an issue. While the reviewers looked at facilities subject to corrective action requirements when reviewing the allegations made with respect to Ohio's voluntary action program (VAP), the review did not look at the timing of corrective action. Whether conducted by the State or U.S. EPA under RCRA or another statute, remedial investigation and action can take a considerable amount of time depending on the site-specific circumstances. U.S. EPA authorized Ohio EPA for the RCRA Subtitle C corrective action requirements on December 23, 1996, and has monitored Ohio EPA's corrective action program on a regular basis. U.S. EPA has not found Ohio EPA's corrective action program deficient in U.S. EPA's annual reviews and does not find the corrective action program deficient in this review.

Comment No. 7

Petitioners object to Ohio EPA's filing of Consent Orders simultaneously with, or within a few days of, filing RCRA enforcement complaints in court; and argue that this deprives Ohio citizens of any real opportunity to intervene in state enforcement actions. Petitioners claim that Ohio EPA fails to allow public participation in the RCRA enforcement process.

Response: The United States also files complaints simultaneously with agreements in many administrative and judicial environmental cases. In fact, the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits explicitly provides for this at 40 C.F.R. §22.13(b). Petitioners object to such Ohio filings for RCRA cases, citing the requirements at 40 C.F.R. §271.16(d), which provide three options for Ohio to provide for public participation in the State enforcement process. Consistent with the option at 40 C.F.R. §271.16(d)(1), Ohio has authority which allows intervention as of right. The filing of a complaint jointly with an agreement does not prevent parties from intervening.

Comment No. 8

Petitioners argue that Ohio EPA fails to implement its hazardous waste program in a manner that is consistent with or equivalent to the federal RCRA program.

Response: U.S. EPA has found Ohio's program to be equivalent to the federal program and found no issue with respect to consistency, which is defined at 40 C.F.R. §271.4 to include unreasonable restrictions on the free movement of hazardous waste, prohibitions on the treatment, storage or disposal of hazardous waste without a basis in human health or environmental protection, or a deficient manifest system.

Comment No. 9

With respect to the RCRA Subtitle D program, petitioners claim that there was a failure to upgrade open dumps and ensure solid waste is disposed of in an environmentally sound manner, a failure

to regulate municipal solid waste landfills by requiring compliance with the Ohio CAA State Implementation Plan (SIP) and CWA, preventing gas over lower explosive (LEL) at the facility boundary, and preventing chemicals from reaching the aquifer, including failure to require data for determining soil porosity.

Response: The criteria and procedures for withdrawing an adequacy determination for a State Municipal Solid Waste Landfill (MSWLF) permit program are in 40 C.F.R. §239.13. This part states that the Regional Administrator may initiate withdrawal of an adequacy determination when there is reason to believe that: (1) a state no longer has an adequate permit program; or (2) the state no longer has adequate authority to administer and enforce an approved program in accordance with 40 C.F.R. Part 239. U.S. EPA reviewed Ohio's MSWLF program and did not find grounds upon which to initiate withdrawal proceedings. This and other comments and issues raised in the petition, public hearing and subsequent comment period are not sufficient to indicate that the program is inadequate.

Comment No. 10

The petitioners cite the following as RCRA program shortcomings that have been documented or have not been evaluated: (1) a decline in number of inspections of major polluting facilities or known violators; (2) a failure to verify representations of polluters; and (3) a failure to find unregulated facilities which are circumventing the law.

Response: The decrease in the number of RCRA compliance evaluation inspections by Ohio EPA's hazardous waste program is primarily due to a drop in the number of inspections at small quantity and very small quantity hazardous waste generators. Inspection coverage standards have not been established for these types of installations. Ohio EPA has met the federal inspection program requirements outlined in Section 3007(c), (d), and (e) of RCRA for inspecting hazardous waste treatment, storage, and disposal facilities. In addition, Ohio EPA's 1999 and 2000 Year Workplans included a commitment to inspect 20% of the large quantity hazardous waste generator universe during each of those years. Ohio EPA met this commitment both years. Ohio EPA has not failed to inspect and monitor activities subject to regulation.

Verifying representations of regulated RCRA hazardous waste facilities is done by Ohio EPA's hazardous waste enforcement division as part of its periodic inspection program. U.S. EPA determined that the procedures followed under this program are adequate to verify information provided by the regulated community, and comply with the requirements of 40 C.F.R. §271.15(b)(2).

Ohio EPA's Division of Solid and Infectious Waste Management or local Health Departments with delegated authority as part of their periodic inspection program verify representations by solid waste facilities. This and other comments and issues raised in the petition, public hearing and subsequent comment period are not sufficient to indicate that the program is inadequate.

Comment No. 11

Petitioners say that the public perceives a conflict of interest due to the tipping fees facilities like Envirosafe pay Ohio EPA, and take issue with the remedy Ohio EPA obtained against Envirosafe.

Response: The collection of tipping fees, which are fees charged for tipping a truck bed to transfer the contents, from the universe of regulated entities to help fund the hazardous waste program does not implicate the withdrawal criteria. Collection of fees for participation in regulated activities is not uncommon and does not create a conflict of interest. As an analogy, the fact that a toll authority collects tolls to fund road repairs does not mean that drivers exceeding the speed limit will not be cited. The CAA requires a state to collect fees for permits; and RCRA does not prohibit the collection of fees for participating in regulated activities.

Comment No. 12

A number of commenters, including the petitioners, expressed concerns with Ohio's voluntary action program (VAP); and the petitioners noted that Ohio intends to allow RCRA sites to undergo the VAP instead of performing RCRA corrective actions.

Response: The VAP statute, which explicitly precludes participation by properties for which a voluntary action under the VAP statute is precluded by federal law, including RCRA, did not present an "inadequate legal authority" issue for RCRA subtitle C authorization during the period of review. As implemented during the period of review, the VAP program did not impact the State's authorization. The information reviewed for the period 1995 to 2000 indicated that Ohio EPA had not abandoned enforcement efforts because of the VAP, and continued to secure corrective action through permits. Ohio EPA has expressed a desire to use the VAP program to address RCRA-eligible sites where appropriate. U.S. EPA is working with Ohio to resolve issues associated with future participation of RCRA facilities in the VAP program.

Comment No. 13

A commenter asked whether there were trends in the types of RCRA violations statewide and in different districts, and another asked whether the decline in inspections should be viewed in terms of a decline in existing facilities.

Response: U.S. EPA did not conduct these types of analyses since the subjects do not relate clearly to the withdrawal criteria.

Comment No. 14

Petitioners allege that Ohio EPA failed to comply with CWA anti-degradation requirements before issuing permits for landfills and cite this as an example of failure to issue permits that conform to federal law.

Response: Based upon U.S. EPA's review of Ohio EPA's Hazardous Waste Program, there is no information to indicate that Ohio EPA failed to implement the hazardous waste program in a manner consistent with or equivalent to the federal program requirements.

This comment raises a CWA issue which is not considered relevant to the criteria for withdrawal of a determination of adequacy of a MSWLF permit program found in 40 C.F.R. §239.13.

Comment No. 15

Petitioners claim that the Draft Report's reference to a 1994 Findings and Order against Tremont Landfill omits several important facts, including that no cleanup is occurring and that U.S. EPA is considering getting involved.

Response: This facility is currently closed, but is undergoing post-closure activity. Through an agreed order, U.S. EPA is requiring potentially responsible parties to implement a remedial investigation/ feasibility study under the Comprehensive Environmental Response, Compensation and Liability Act.

Comment No. 16

Petitioners claim that the Draft Report's reference to a 1997 Findings and Order against ELDA Landfill omits that landfill gas had been migrating outside facility boundary for ten years without enforcement action. The petitioners say Ohio EPA allowed landfill gas from the ELDA Landfill to migrate to a low income, mostly minority community for over a decade in violation of 40 C.F.R. §258.23. Petitioners note that Ohio EPA took action only after the affected community spent its resources presenting evidence of such migration.

Response: The cited regulation requires that explosive gases be controlled and monitored. The regulation does not require that the gases be eliminated. In this case, the landfill portion of the facility is currently closed and post-closure activities are underway. The recycling facility and transfer station are not facilities that fall under the Subtitle D regulations, and are therefore outside the scope of this review. Ohio EPA, the City of Cincinnati, and Hamilton County conduct regular compliance inspections at the facility to monitor compliance and landfill gas management system performance.

Comment No. 17

Petitioners claim that the Draft Report's reference to a 1996 fine and reconstruction at Rumpke Landfill ignores that Rumpke was allowed to turn its landslide into a multi-million dollar expansion.

Response: The reconstruction of the slope in the area of the landslide was necessary in order to prevent further structural failure of the entire fill area and mitigate immediate health, safety and environmental threats. This reconstruction was conducted in accordance with Ohio EPA orders which took into account the emergency situation, existing permit conditions and applicable solid

waste regulations. The penalty of $1 million eventually assessed in the case was the largest in state history for a MSWLF.

Comment No. 18

Petitioners claim that Ohio EPA has failed to maintain minimum requirements under RCRA's solid waste authority, and allege that evidence presented at the November 13, 2001, public meetings shows that Ohio's Solid Waste Plan, its implementation and enforcement fail to satisfy the requirements of 42 U.S.C. §§ 6943(a)(2) and (3), that Ohio EPA has failed to ensure waste is disposed of in compliance with 42 U.S.C. § 6944(a) and in an environmentally sound manner, and has failed to obtain the closing or upgrading of all existing open dumps in accordance with 42 U.S.C. § 6945 by regularly allowing the expansion of open dumps, including vertical expansion of old unlined landfills.

Response: Ohio EPA's solid waste program meets the criteria set forth in 42 U.S.C. § 6943(a)(2) and (3). The facilities referenced in the petition are MSWLFs which are regulated in a manner meeting or exceeding the Subtitle D regulations. State regulations prohibit the establishment of open dumps and all proposed MSWLFs must be permitted prior to construction. This and other comments and issues raised in the petition, the public meetings and the public comment period are not sufficient to indicate that the program is inadequate.

Comment No. 19

With respect to Subtitle D, the petitioners cite what they allege is an improper approval of Clarkco Landfill as an example of faulty siting policies (e.g., over a 197 gpm aquifer), which they claim have not been evaluated. In addition, the petitioners claim that Ohio EPA has failed to meet the requirements of 40 C.F.R. §§258.40, 258.51 and 258.53 by failing to account for the presence of vertical fractures in glacial till at the Clarkco Landfill. They also mention the Monsanto Bond Road Landfill in Whitewater Township, Hamilton County, as another example.

Response: At this time, the Clarkco Landfill has not received final approval, in part due to many of the issues raised by the petitioners. Therefore, it is not possible to evaluate this comment within the context of program adequacy. The considerations relating to vertical fractures and the siting of MSWLFs are not listed in 40 C.F.R. Part 258, and are considered more stringent than the Subtitle D regulations. Therefore, Ohio EPA has flexibility in its application of these more stringent siting restrictions, as allowed by state regulations. The Monsanto Bond Road landfill was permitted in a manner consistent with the Subtitle D regulations.

Comment No. 20

With respect to Subtitle D, the petitioners question Ohio EPA's management of fly ash, claiming that Ohio EPA fails to determine if fly ash is hazardous and to protect water supplies, allows placement of fly ash at a closed landfill despite weight concerns, and disclaims authority to regulate it.

Response: The management of fly ash does not fall under the MSWLF permitting regulations, and is therefore outside the scope of U.S. EPA's review. This and other comments and issues raised in the petition, public hearing and subsequent comment period related to the fly ash issue are not sufficient to indicate that the program is inadequate.

Comment No. 21

With respect to Subtitle D, the petitioners say that Ohio EPA allowed landfill gas from the Tremont Landfill to rise to a level that blew off the cap of a neighboring well.

Response: This incident took place before the MSWLF regulations were in effect in Ohio. Therefore, even if the explosion were related to Tremont Landfill, it would not be relevant to Ohio EPA's implementation of the MSWLF permit program.

Comment No. 22

With respect to Subtitle D, the petitioners claim that Ohio EPA systematically fails to account for hazardous chemicals being released into the air via landfill gas and routinely fails to enforce CAA SIP nuisance provisions at landfills.

Response: This comment raises a CAA issue which is not clearly related to the criteria for withdrawal of a determination of adequacy of a MSWLF permit program in 40 C.F.R. §239.13. This and other comments and issues raised in the petition, public hearing and subsequent comment period relating to the CAA at MSWLFs are not sufficient to indicate that the Subtitle D program is inadequate.

Comment No. 23

With respect to Subtitle D, the petitioners raised allegations about odors, violations, gas migrations, leachate migrations, gas monitoring, illegal activities and/or underground fires at the Hardy Road Landfill, American Landfill, Pine Hollow Landfill, Countywide Landfill, Norton Environmental Ridge Landfill, Stark Disposal, Royalton Landfill, Indian Run Landfill and Exit C&D Landfill, citing statements made by individuals at the public meeting.

Response: Since the concerns and allegations relating to these facilities were not cited by the petitioners in the January 27, 2000, amended petition, U.S. EPA did not specifically review these facilities for the Draft Report. U.S. EPA considers new allegations regarding specific facilities outside the scope of the initial petition. It should be noted that the management of construction and demolition debris (Exit C&D Landfill) does not fall under MSWLF permit program. It should also be noted that the odor issues are not clearly related to the criteria for withdrawal of a determination of adequacy of a MSWLF permit program in 40 C.F.R. §239.13.

Concerns regarding each of these facilities were taken very seriously, however. Though not required to do so as part of this response to comments, U.S. EPA investigated the issues raised and responded directly to the individuals who made statements at the public meeting regarding these landfills.

Comment No. 24

With respect to Subtitle D, the petitioners say the Ohio EPA has failed to monitor for contamination of groundwater caused by the release of landfill gas as opposed to leachate.

Response: U.S. EPA reviewed Ohio EPA's regulations for the monitoring and management of landfill gas and leachate and considers the State regulations more stringent than the requirements in the Subtitle D regulations. U.S. EPA determined that Ohio EPA's procedures for groundwater monitoring under the MSWLF program are adequate to detect groundwater contamination resulting from potential releases of landfill gas.

Comment No. 25

A commenter alleges that Ohio EPA was unresponsive to concerns about 7 acres of open toxic lagoons, settled for a consent decree involving capping, and has not enforced off-site testing.

Response: U.S. EPA reviewed compliance assurance actions taken by Ohio EPA at a broad range of regulated hazardous waste sites throughout Ohio to determine if there was an overall failure to act on violations, seek and collect adequate penalties, inspect and monitor, or comply with the MOA. Although petitioners raised a number of specific issues regarding the adequacy and timeliness of actions taken at certain sites, U.S. EPA did not find an overall failure by Ohio EPA's enforcement program to act on violations, seek and collect adequate penalties, inspect and monitor, or comply with the MOA.

Comment No. 26

Two commenters note that the ELDA landfill was allowed to begin construction of a transfer station without a permit to install (PTI) or a public hearing.

Response: The recycling facility and transfer station are not facilities which fall under the Subtitle D regulations, and are therefore outside the scope of U.S. EPA's review.

Comment No. 27

A commenter claims that Ohio EPA landfill permits are based on incomplete or faulty assumptions and rely solely on company representations, and feels that Ohio EPA should take socio-economic factors into consideration.

Response: Ohio EPA permitting and technical staff attempt to verify assumptions, data and information submitted by companies, and may conduct independent analyses when such data is challenged. Socio-economic considerations are not considered within the context of the MSWLF regulations, and are therefore not relevant to the criteria for withdrawal of a determination of adequacy of a MSWLF permit program found in 40 C.F.R. §239.13.

Comment No. 28

A commenter claims that a lack of funds prohibited Ohio EPA from timely testing contaminated residential wells and alleges that more needed to be done for residents with contaminated wells. He comments that Ohio EPA needed more funding for this.

Response: This comment did not indicate the location of the contaminated wells within Greene County or the possible source of the contamination. As discussed above, RCRA does not require Ohio EPA to conduct monitoring of wells in a community. This comment does not appear to be related to the programs addressed in the petition.

Comment No. 29

Several commenters express concern with respect to the number and proximity of landfills in Stark County and Sandy Township and the potential for future leakage. One indicates that Ohio EPA should look beyond technical design requirements in the permit process.

Response: The number and proximity of proposed and existing landfills are not considered within the context of the MSWLF regulations, and are therefore not relevant to the criteria for withdrawal of a determination of adequacy of a MSWLF permit program in 40 C.F.R. §239.13. Current state environmental laws authorize Ohio EPA to only consider factors addressed by the MSWLF regulations. Local officials are responsible for zoning restrictions which would address these siting concerns.

Comment No. 30

A commenter, referencing proposed State regulations for the Subtitle D program, asks whether Ohio EPA can waive or exempt U.S. EPA siting criteria.

Response: As discussed above, certain Ohio EPA considerations relating to the siting MSWLFs are not listed in 40 C.F.R. Part 258, and are considered more stringent than the Subtitle D regulations. Therefore, Ohio EPA has flexibility in its application of these more stringent siting restrictions, as allowed by State regulations.

Comment No. 31

State Senator Craig DiDonato expresses a concern that Ohio EPA may have neglected its duty in the siting, permitting and oversight of landfills.

Response: U.S. EPA reviewed Ohio's MSWLF program and did not find grounds upon which to initiate withdrawal proceedings. See Responses to previous comments, especially comments 8, 18, and 19.

Comment No. 32

A commenter alleges that Ohio EPA violated its own siting law in allowing the construction of the WTI facility in East Liverpool, states that siting criteria and accident analysis in risk assessment

need to be addressed in renewal of the WTI RCRA permit, and asserts that U.S. EPA has no choice but to withdraw authorization based on the WTI facility alone.

Response: The language in the Ohio Revised Code states that the Ohio Hazardous Waste Facility Board (HWFB) shall not approve a hazardous waste facility installation and operation permit unless it finds that the active areas within a new hazardous waste facility where certain hazardous wastes will be stored, treated, or disposed of and where the total of that storage and disposal capacity is greater than two hundred fifty-thousand gallons, are not located or operated within two-thousand feet of any residence, school, hospital, jail, or prison. It is our understanding that the Governor of Ohio signed that language into State law and made it effective on August 1, 1984, which would have been after the Hazardous Waste Facility Approval Board (the former name of the HWFB) had issued its installation and operation permit to WTI (which was issued and became effective on April 27, 1984). Therefore, this law did not exist when the Board issued the permit for the WTI facility. It is our understanding that this law has no retroactive application.

Risk assessment is not required under RCRA regulations, but has frequently been performed as part of the RCRA permitting process for hazardous waste combustion facilities. Because a risk assessment (including an accident analysis) was previously conducted for this facility, we do not believe at this time that further risk evaluation would be necessary, unless permitted emissions were to be greatly increased, or unless the facility were to be modified in such a way as to significantly increase the likelihood of an unplanned release.

With respect to the question of withdrawing authority based on a single facility, the withdrawal criteria at 40 C.F.R. §271.22 speak in terms of systemic problems that rise to the level of a failure to meet program requirements. With respect to permitting, 40 C.F.R. §271.22(A)(2)(ii), refers to "repeated issuance of permits" which do not conform to the requirements of that part. During its review of the Ohio RCRA program, U.S. EPA found no evidence of systemic problems or repeated instances of issuance of nonconforming permits.

Comment No. 33

Two commenters allege that Ohio EPA had failed to consider the impact of vertical fractures at the Envirosafe hazardous waste facility on groundwater, indicating that leaking had caused groundwater contamination. One states that Ohio EPA fails to consider the impact of hazardous waste facilities on groundwater.

Response: In 1990, U.S. EPA conducted a three-day pump test at Envirosafe Services of Ohio. Dr. Cartwright, a groundwater expert hired by U.S. EPA, found no evidence of connectivity between the sand zone and the bedrock aquifer.

Under 40 C.F.R. §270.21, RCRA Part B applications for hazardous waste landfills must demonstrate that the proposed location and design prevents the migration of hazardous constituents into the

groundwater or surface water at any future time. U.S. EPA's review of the Ohio EPA permitting program did not indicate a failure by the state to consider applicable siting criteria.

In its review of the Ohio EPA's implementation of the RCRA programs, U.S. EPA found no grounds upon which to initiate withdrawal proceedings for either RCRA program.

Comment No. 34

One commenter, in numerous submittals, requests documentation regarding the Envirosafe facility in Oregon, Ohio; expresses displeasure with Ohio EPA permitting, specifically at Envirosafe; expresses displeasure with Ohio EPA's response to her written requests and questions and general frustration with Ohio EPA; asks for a response to two letters previously sent; requests a visit to Ohio EPA to view public records regarding Envirosafe; and requests a public meeting to discuss Envirosafe and alleged Ohio EPA deficiencies. The commenter also alleges that Ohio EPA has stated that U.S. EPA does not require that an administrative records be available to the public.

Response: To the extent that the commenter is requesting information and making allegations specific to the Envirosafe facility, the comments have been forwarded to U.S. EPA staff working on that facility. As indicated above, the withdrawal criteria are written in terms of systemic failures, and do not focus on individual facilities.

With respect to public records, states must make available information obtained regarding treatment, storage and disposal facilities to the public in substantially the same manner, and to the same degree, as U.S. EPA would (under the Freedom of Information Act (FOIA)). The request to review the state records should be directed to the State, however. U.S. EPA also maintains its own records regarding the federal Envirosafe permit.

With respect to administrative record availability, requirements for administrative records in the federal hazardous waste permitting program are at 40 C.F.R. §§124.9 and 124.18. Those sections are not referenced in the requirements for state permitting at 40 C.F.R. §271.14.

This commenter, while expressing displeasure with Ohio EPA involvement at the Envirosafe facility, and dissatisfaction with Ohio responsiveness, did not allege that Ohio had failed to meet program requirements.

U.S. EPA held public meetings on the Ohio Program review in Columbus on the afternoon and evening of November 13, 2001. While U.S. EPA considered holding a number of meetings at locations throughout Ohio, it decided, after consulting with the petitioners, to hold centrally located meetings. A centrally located meeting allows citizens from different parts of the State to listen and react to each other's questions and comments and, as discussed above, the withdrawal criteria are not facility-specific. U.S. EPA also accepted written comments until January 14, 2002.

Comment No. 35

A commenter states that Ohio EPA had done a good job cleaning up a hazardous waste site.

Response: No response required.

Comment No. 36

A commenter asks whether anything was going to be done about 1,200 Brownfield sites in Ohio. Thirty-five of them are considered high priority (no mention of corrective action).

Response: This comment does not appear to be related to the programs addressed in the petition. We have forwarded this comment to U.S. EPA Region 5's Superfund program.

Comment No. 37

A commenter indicates that he owns a contaminated service station at which Ohio EPA has been conducting a site assessment for 10 years. He does not believe the assessment is complete and says Ohio EPA allows oil companies to investigate themselves. He claims that the oil company responsible is constantly trying to harass, intimidate and threaten him, and has put in over 40 borings and monitoring wells, virtually destroying the property. He also indicates that the owner's consultants have found problems that the responsible party and Ohio EPA did not identify, and says he does not appreciate spending his own money on consultants. He further complains that tax dollars have been misspent by agencies such as Ohio EPA.

Response: Since the concerns and allegations relating to this facility were not cited by the petitioners in the January 27, 2000, amended petition, U.S. EPA did not specifically review this facility for the Draft Report. U.S. EPA considers new allegations regarding specific facilities outside the scope of the initial petition, and will not make final conclusions and determinations based on them. Moreover, underground storage tanks are regulated by a State agency separate from Ohio EPA.

While not responding to it as part of the petition process, U.S. EPA has forwarded this concern to its underground storage tanks staff.